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~~Index to the~~
Abstract of the
Proceedings of the
Council of the
Governor General of
India, 1862 ~~with~~
~~index~~ - Vol. I

Year: 1863

Subj. — Law and
Legislation / India /
Council proceedings /
Abstract

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ABSTRACT OF THE

PROCEEDINGS

OF THE

COUNCIL OF THE GOVERNOR-GENERAL OF INDIA

ASSEMBLED FOR THE PURPOSE

OF MAKING

LAWS AND REGULATIONS.

1862.

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BENGAL SECRETARIAT LIBRARY

Abstract of the Proceedings of the Council of the Governor-General of India assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., C. 67.

THE Council met at Government House, on Saturday, the 18th January 1862.

PRESENT:

His Excellency the Viceroy and Governor-General of India, *presiding*.

Additional Members of the Council ... His Honor the Lieutenant-Governor of Bengal, and His Highness the Maharajah of Puttiala, K. S. I.

Ordinary Members of the Council. The Hon'ble Sir H. B. E. Frere, K. C. B.; The Hon'ble Cecil Beadon; Major General the Hon'ble Sir R. Napier, K. C. B.; The Hon'ble S. Laing; The Hon'ble W. Ritchie.

Additional Members of the Council ... The Hon'ble H. B. Harington; The Hon'ble H. Forbes; The Hon'ble C. J. Erskine; The Hon'ble W. S. Fitzwilliam; The Hon'ble D. Cowie; The Hon'ble Rajah Deo Narain Singh Bahadoor; The Hon'ble Rajah Dinkar Rao Rugonauth Moontazim Bahadoor.

His Highness the Maharajah of Puttiala and the Hon'ble Rajah Deo Narain Singh Bahadoor and the Hon'ble Dinkar Rao Rugonauth Bahadoor made a solemn declaration of Allegiance to Her Majesty, and that they would faithfully fulfil the duties of their office.

The other additional Members took the Oath of Allegiance, and the Oath that they would faithfully fulfil the duties of their office.

RULES FOR THE CONDUCT OF BUSINESS.

His Excellency the Viceroy and Governor-General laid on the table the Rules for the Conduct of Business at Meetings of the Council.

His Excellency stated that the Rules had been framed by the Governor-General in Council in accordance with the Act of Parliament, but that they were open to consideration and revision by the Council. A copy would be forwarded to each Member. By the Rules it was provided that the Council should ordinarily meet on Wednesdays, and His Excellency would propose that the next Meeting be held on Wednesday next. He would remind the Council that, under the 14th Rule, three days' previous notice of the Title and Subject of any Bill which any Member wished to introduce must be given to the Secretary, and therefore if leave were to be moved for to introduce any Bill next Wednesday, such notice must be given this day.

The Council then adjourned till Wednesday, the 22nd instant.

W. GREY,

Secy. to the Govt. of India, Home Dept.

CALCUTTA;
The 18th January 1862.

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The Hon'ble H. Forbes.
The Hon'ble C. J. Erskine.
The Hon'ble W. S. Fizwilliam.
The Hon'ble D. Cowie.
The Hon'ble Rajah Deo Narain Singh Bahadoor.
The Hon'ble Rajah Dinkar Rao Rugonauth Moontazim Bahadoor.

STATE GRANTS.

The Hon'ble SIR BARTLE FRERE moved for leave to bring in a Bill for securing certain grants of immoveable property made by the State. He stated that the Bill had been originally introduced into the late Legislative Council, on the recommendation of the Lieut nant-Governor of the North-Western Provinces, and had been referred to a Select Committee, by whom a Report had been prepared. The Bill, as altered by that Committee, together with that Report, would be laid on the table, and circulated to the Members before its introduction at the next Meeting of this Council.

The Motion was put and agreed to.

FOREIGNERS.

The Hon'ble MR. BEADON moved for leave to bring in a Bill to make further provision relating to Foreigners. The object of this Bill was to revive the Act XXXIII of 1857, which had expired in December last, and to re-enact it for a further period of two years. The Bill would empower the Government to remove Foreigners from the country under certain circumstances, and also to prohibit their travelling in India without a license.

The Motion was put and agreed to.

NEW COINAGE.

The Hon'ble MR. RITCHIE moved for leave to bring in a Bill to provide for a new Silver and a new Copper Coinage. He stated that the object of the Bill was to legalize coin under the new Coinage, for which the dies had been received from England. That Coinage would be of the same denomination, standard, and

weight as the Coinage now in use; but the title of the East India Company would be omitted from the obverse, as well as the designation in Persian now required by law. The name, title, and likeness, of Her Majesty would appear on the obverse, and the name of the coin in English only. These changes would require the authority of a law. The copper Coinage would not require any alteration of a law in respect of any changes of this nature. But advantage would be taken of the opportunity to repeal old laws respecting the copper Currency, and to consolidate the whole law on the subject in one Act.

The Motion was put and agreed to.

PROTECTION AGAINST BAD COIN.

The Hon'ble MR. RITCHIE moved for leave to bring in a Bill for the better protection of the public against bad coin. He stated that, before the passing of the Penal Code, there were several laws relating to offences respecting the coin; but they were insufficient to meet all the devices which modern ingenuity had adopted for counterfeiting coin. The Penal Code had a Chapter (No. XII) which provided for nearly every offence relating to coin, but no law had yet been passed, touching the rights and duties of the public and the Government in respect of coin which ought to be withdrawn from circulation.

In England all false coin was absolutely forfeited to the Government, but no provision had yet been made in this country as to coin that was originally good but had become impaired. Doubts arose as the right to break up both false coin and good coin that had been falsified. In some cases the offence by which the coin had been impaired had not been committed by the person in whose possession it was found, and it sometimes happened in this country that false coin was itself very valuable. In one case false Gold Mohurs had been seized, which were intrinsically worth more than the same number of Government Gold Mohurs, though they were less in value than the Gold Mohurs they were intended to imitate. In any such case the absolute forfeiture would be a hardship on an innocent holder. The Bill which he proposed to introduce would provide, that all instruments used in making false coin should be forfeited; and that all clippings of coin, and all gold and silver in solution obtained by any operation upon coin, should be forfeited; and that all false coin should be forfeited when the offence of falsification had been committed by the holder, or the coin had been received without due caution, or the coin had been obtained without the payment of the full value. But where the holder was innocent, the coin would be only broken up and the material returned to him. The Bill would also provide for the case of false or impaired coin being tendered, and the right of a person to whom it was tendered to break it up. But provision would be made to meet the cases of dispute as to the coin being really false, and the provisions of the Consolidating Statute of 1860 would be generally followed. Provision would also be made for withdrawing from circulation coin that had become below weight, though there should be no proof of any operation having been performed on it; and the Bill would provide for two offences which

were to be found in the Consolidating Statute, but not in the Penal Code; *viz.*, the offence of having in possession, with guilty knowledge, filings or clippings of coin, or gold or silver in solution, obtained in the process of some operation performed on coin, and the offence of having in possession without lawful excuse or authority, more than five pieces of false coin, or coin that had become impaired. As to false coin, the offence was provided for by 9, George IV, Chapter 74, by which the offence was made punishable by fine. But it was intended to extend the provision to genuine coin on which any illegal operation had been performed; and the law would be general, instead of being confined, as it was now, to Presidency Towns and to European subjects.

The Motion was put and agreed to.

EMIGRATION (FRENCH COLONIES.)

The Hon'ble MR. RITCHIE moved for leave to bring in a Bill for the amendment of Act XLVI of 1860 (authorizing and regulating the Emigration of Native laborers to the French Colonies). He stated that the object of the Bill was to adapt the law, under the Act XLVI, of 1860, authorizing Emigration to French Colonies, to an additional Article of the Convention of 1860 between Her Majesty and the Emperor of the French, which had been signed in 1861. It was provided that, on the one hand, the Governor-General in Council, if he thought that the emigrating laborers did not meet the protection provided by that Act, should have power to withdraw the privilege of contracting for such Emigration; and on the other, that the Emperor of the French should in that case be at liberty to resort to the former manner of obtaining laborers on the Coast of Africa. The Convention also provided for its coming into operation on the 1st of July 1862, except as to Réunion, in respect of which Island it would come into operation at once. These alterations in the Convention rendered necessary an alteration in the law.

The Motion was put and agreed to.

BANK OF BENGAL.

The Hon'ble MR. RITCHIE moved for leave to bring in a Bill for the regulation of the Bank of Bengal. He stated that the object of this Bill was to provide a new Charter for the Bank of Bengal, in lieu of that contained in Act VI of 1839. Notice had been given under that Act by the Governor-General in Council, that the privilege of issuing Notes should cease from the month of March next; and the Currency Act had been passed, and an agreement entered into with the Bank for the transaction of a considerable part of the Government business in respect of the Currency and otherwise. The new Charter would provide for carrying that agreement into effect, and for making several other important alterations. The Capital of the Bank, which was now held in 2,675 Shares of 4,000 Rupees each, would henceforth be held in 10,700 Shares of 1,000 Rupees each, and this number might be increased to 21,400 Shares of that amount, and the Capital might be formed into stock, transferable in amounts of not less than 250 Rupees. Some existing restrictions on loans would be removed, and power given to lend on goods, wares, and merchandize, not of a perishable kind; to grant Post Bills,

to transact Agency business on commission ; and to buy Bills of Exchange for the purpose of remitting funds to meet Bills or Letters of Credit granted to constituents. The Directors would also be authorized to agree to modified terms of remuneration for the transaction of Government business. There were other detailed provisions respecting the power of the Directors, and the mode of conducting the business of the Bank

The Motion was put and agreed to.

SUBSTITUTION OF PRESIDENCY BANKS FOR GOVERNMENT TREASURIES

The Hon'ble MR. RITCHIE moved for leave to bring in a Bill to substitute the Banks of Bengal, Madras, and Bombay, for the General Treasuries of the Governments of Fort William, Madras, and Bombay, as the place for making payments by or to the Government. He stated that the object of this Bill was to place beyond doubt the legality of payments at those Banks of all sums now payable at the Treasury. No doubt could exist in most cases, but in others the Treasury had heretofore been particularly designated as the place of payment. The Act would come into operation at once with respect to the Bank of Bengal, but as the agreements with the Banks of Madras and Bombay had not yet been signed, it would take effect in those Presidencies from the time that the Governor in Council should, in the *Gazette*, notify that the agreements had been signed.

The Motion was put and agreed to.

AFFIDAVITS AFFIRMATIONS, &c.

The Hon'ble MR RITCHIE moved for leave to bring in a Bill to amend the law relating to affidavits, affirmations and solemn declarations He stated that the object of this Bill was, to effect a change in the law relating to affidavits and the like, and it would principally affect the Courts established by Royal Charter At present the affidavits that could be received there must be sworn in the Court, or before Commissioners appointed for the purpose. This course involved much delay and expense, and much hardship was felt in respect of probates and letters of administration applied for by persons residing at a distance from the Presidency Towns. The law had been altered in England by an Act of William IV, empowering Magistrates to take affidavits , and this law had been extended to Consuls, Ambassadors, and others in Foreign places. This Bill would contain provisions of a similar character, and would also provide for voluntary affidavits. Many such were taken as to the death of particular persons, the right of persons to receive particular sums of money, and the like, and were often acted on ; but it was doubtful if the oaths to such affidavits could be legally administered in this country, and the deponents were not liable to punishment for perjury. The law had been amended in England, and this Bill would extend a similar change to this country, authorizing such affidavits to be taken, and rendering the deponents liable to punishment for false swearing

The Motion was put and agreed to.

STAMP DUTIES.

The Hon'ble MR. HARINGTON moved for leave to bring in a Bill to consolidate and amend the law relating to Stamp Duties. He stated that

he had introduced a Bill into the late Legislative Council in the month of August last, entitled a Bill "further to amend Act XXXVI of 1860 (to consolidate and amend the law relating to Stamp Duties"), which had been read a second time, and referred to a Select Committee in September. That Bill had been published in the *Government Gazettes* of the several Presidencies, and many valuable suggestions had been received. The Bill had been considered by the Select Committee, and was now ready to be considered with its amendments. It had been felt that the Stamp Act was in some respects too stringent, and that some modification of its provisions might be safely made. The scale of Stamp Duty also was found in some cases to be too high, and a reduction had been proposed. Schedule A would include some additional articles, which it was considered might fairly bear a Stamp Duty, but the main object of the Bill had been kept in view, *viz.*, to afford relief to the mercantile community, and it was probable that the Bill would secure this object, and at the same time some increase rather than any diminution of the Revenue.

The Motion was put and agreed to.

The Hon'ble MR. HARINGTON then proposed that the Rules should be suspended, in order that this Bill should at once be referred to a Select Committee. The passing of the Bill was desirable not only to afford relief to the community, but also for the purposes of Revenue.

His Excellency the PRESIDENT thought it both reasonable and advantageous that this Bill should be proceeded with, as proposed by Mr. Harington, under a suspension of the Rules. But he considered that it would be more in accordance with the Rules of the Council, that the Bill should in the first instance be printed for the use of the Members, and that the motion should then be made.

The Hon'ble MR. HARINGTON said that he would proceed in the manner that His Excellency had suggested.

CRIMINAL LAW REPEAL.

The Hon'ble MR. HARINGTON moved for leave to bring in a Bill to repeal certain Regulations and Acts relating to Criminal Law and Procedure. He stated that the object of this Bill was, the repeal of those Acts and Regulations which had been superseded, and were virtually rescinded by the Indian Penal Code and the Code of Criminal Procedure. The number of such Regulations and Acts was between 200 and 300. This would show the extent of relief, alike to the Judicial Officers of the Government administering the law, and to the public at large, which had been effected by the Codes which had lately occupied the attention of the Legislative Council. The Criminal Law and Procedure might for the most part be now comprised in one small volume.

The Motion was put and agreed to.

REGISTRATION OF ASSURANCES.

The Hon'ble MR. FORBES moved for leave to bring in a Bill to provide for the Registration of Assurances. He stated that the object of this Bill was to prevent forgery and fraudulent suits, by providing that no document respecting

immoveable property of more value than 100 Rupees should be given in evidence unless registered; and that no action should be brought, on any unregistered instrument relating to immoveable property of less value than 100 Rupees, after a period of two years from the time the cause of action arose; and that no action should be brought, on any unregistered instrument affecting moveable property, after three months from the time the cause of action arose. The Bill at present was restricted to the Mofussil, but its provisions might hereafter be extended to the Presidency Towns.

His Honor the LIEUTENANT-GOVERNOR of Bengal said, that this Bill raised an important question respecting the division of business between the Council of the Governor-General, and the Local Councils. It was desirable that general laws should be similar through all India, yet that was not a matter of great importance. In every great Province, however, there ought to be no incongruity. The question as to the duties of the Local Councils might be decided in one of two ways. The Local Councils might be restricted to laws called local laws, but such laws were few and unimportant: in the last eight years the Legislative Council had passed very few of such laws. Or the Council of the Governor-General might pass only such laws as were manifestly of an Imperial character. In Sir C. Wood's Despatch (paragraph 10) he spoke of the legislative powers of the minor Presidencies being restored by the new Councils' Act, and the object of that Act seemed to be that, great Imperial measures only should be taken up by the Governor-General's Council. He spoke on behalf of himself and the other Presidencies, and thought that the 31st paragraph of Sir C. Wood's Despatch should be their guide. That paragraph referred to the 43rd Section of the Councils' Act as indicating the measures to be reserved for the Imperial Council. This Bill did not fall within that category. Sir C. Wood in his 32nd paragraph indicated that the Council of the Governor-General might legislate upon other topics, but that as a general rule it should not interfere with matters of local legislation. He was not opposed to a Registration Bill, but it was not necessary that the law of Registration should be the same in all parts of India. If a system of Registration were provided for England, as there was one for Scotland already, it might differ from the Scottish system, yet be equally effective for its own purposes. He was not prepared to suggest how the division of business should be made, but he thought it desirable that the subject should be considered.

His Excellency the PRESIDENT stated that he agreed in most of the views stated by His Honor the Lieutenant-Governor, but he did not think that it was necessary, in dealing with the present motion, to deal with the point that had been raised. Parliament had substantially settled it in the 43rd Section of the Councils' Act. Practical difficulties might arise as to the application of the principle which that Section laid down, but such differences should be met as they arose. The division of business would not depend on the territorial limits of the Districts affected by any Bill, but on its subject matter. Some matters must be kept in the hands of the Governor-

General in Council. Such were the Army, the Revenue, questions affecting the religions of the people, the Post Office, Patents, and the like. These were advisedly reserved. There might arise, on some of these heads, questions that would occupy ground on both sides of the line of demarcation, but the Governor-General in Council would decide in each case what Council should proceed with the measure. The present Bill raised a question of that kind. At first sight it seemed that this matter might best be taken up by the Local Legislatures, but this Council contained Members from other Presidencies, who were capable of speaking as to the expediency of proceeding with the Bill in this Council. At present it did not seem necessary to define the application of Section 43.

The Hon'ble SIR BARTLE FRERE agreed, as to the principle, with His Excellency, but generally, as to the details, with the Lieutenant-Governor. Uniformity of Registration was desirable throughout the country, but there might be room for local differences. The Bill should, in the first instance, be before the Council, in order that they might judge how far local requirements had been considered. That could not be determined until the Bill was before the Council.

The Hon'ble MR. HARINGTON thought that the discussion should be confined to this Bill. If there had been local Councils when it was first drawn, the measure would probably have been left to them; but the Bill having been already taken up by the Legislative Council, and the local Governments having already expressed their sentiments on it, there seemed to be no objection to proceeding. At any rate the Bill could be passed for the North-Western Provinces and the Punjab, in which there were no local Councils.

The Hon'ble MR. ERSKINE said he would recommend proceeding with this Bill, even if it were now proposed for the first time; for, if possible, such a measure should be a general one. It was partly a Limitation Law, and it was desirable to have uniformity in the Limitation Law of the Country; and as a Law of Evidence, providing what instruments should be receivable in evidence, it was desirable that the action of the Courts should be uniform. There was a want of uniformity in the Registration Law at home, but that was regarded as a matter of regret.

The Hon'ble MR. FORBES said that this Bill was part of the Civil Procedure; and as an attempt had been made to provide a uniform Code of Civil Procedure, it was desirable that this portion should be uniform too.

The Hon'ble MR. RITCHIE said the question was confined to the leave to bring in the Bill. The Lieutenant-Governor thought that the Bill might trench on the line drawn by Parliament. It was important to keep that line distinct, but it was impossible beforehand precisely to define that line. Some cases would be very difficult to determine: the present case could not be determined till the Bill was introduced. The question would then arise, whether the alteration of the law was in principle, or in detail. Hitherto the law had postponed

unregistered to registered documents. This Bill would render unregistered instruments wholly inoperative. It might be a question if that principle could be adopted, or it might be adopted by this Council, and yet be found inapplicable to some part of India, for which a Local Council might provide. In the meantime there could be no objection to the introduction of the Bill. There were sometimes conveyances of property situated in several Presidencies, and varied legislation might be inconvenient; and on the other hand there might be inconvenience in uniform legislation.

The Hon'ble MR. BEADON said that this was one of the subjects that Local Legislatures would have power to deal with, but this motion to bring in the Bill might nevertheless be agreed to, leaving the Local Councils to determine whether they would take up the subject. This Bill could in any case be made applicable to other Provinces.

The Motion was put and agreed to.

COURTS OF REQUESTS (STRAITS.)

The Hon'ble MR. FORBES moved for leave to bring in a Bill to enlarge the jurisdiction of the Courts of Requests in the Settlement of Prince of Wales' Island, Singapore, and Malacca. He stated that this Bill had been introduced into the late Legislative Council at the request of the Government of India, and its object simply was, to extend the jurisdiction of the Courts of Requests in the Straits' Settlement to 200 Rupees.

The Motion was put and agreed to.

MUNICIPAL ASSESSMENT (RANGOON, &c.)

The Hon'ble MR. FORBES moved for leave to bring in a Bill to extend certain provisions of Acts XIV and XXV of 1856 to the Town and Suburbs of Rangoon, and to the Towns of Moulmein, Tavoy, and Mergui, and for appointing Municipal Commissioners, and for levying rates and taxes, in the said Towns He said that the object of this Bill was to extend Municipal Acts now in force in the Presidency Towns, with some slight modifications, to the Towns of Rangoon, Moulmein, Tavoy and Mergui.

The Motion was put and agreed to.

EXECUTION OF MOFUSSIL PROCESS (STRAITS.)

The Hon'ble MR. FORBES moved for leave to bring in a Bill to extend Act XXIII of 1840 (for executing, within the local limits of the jurisdiction of Her Majesty's Courts, legal process issued by Authorities in the Mofussil). He stated that the object of this Bill was, to extend the provisions of Act XXIII of 1840 to the Straits' Settlement; but the Select Committee of the late Legislative Council had added a provision, to enable a suit to be commenced in any one of the Supreme Courts, against a defendant resident within the limits of any other such Court; but this was guarded by requiring a special order of a Judge.

The Motion was put and agreed to.

EMIGRATION (SEYCHELLES)

The Hon'ble MR. FORBES moved for leave to bring in a Bill relating to Emigration to the British Colonial Dependency of Seychelles. He stated that the object of this Bill was, to extend to the Seychelles Dependency of the Colony of Mauritius the law which permitted Emigration. No change had been made in the law as applied to other Colonies.

The Motion was put and agreed to.

GOVERNMENT SEAL.

The Hon'ble MR. ERSKINE moved for leave to bring in a Bill to amend the law relating to the use of a Government Seal. He stated that it had been found necessary at Bombay to use the Seal of the East India Company, and as a change in the law which rendered this necessary was required for that Presidency, it was considered desirable to frame a general enactment for all India, which he had to move to introduce.

The Motion was put and agreed to.

CUSTOMS LAW CONSOLIDATION.

The Hon'ble MR. ERSKINE moved for leave to bring in a Bill for the consolidation and amendment of the law relating to Customs Duties. He stated that this Bill had been prepared last year by a Committee appointed by the Government of India, and it had then been introduced into the late Legislative Council by desire of the Government, and had been referred to a Select Committee, and published. The local Governments and Chambers of Commerce had been consulted, and various valuable suggestions had been received. He proposed to introduce the Bill again, and to circulate it with the papers that had been received.

The Motion was put and agreed to.

The Council adjourned till Wednesday, the 29th instant, at 11 A. M.

W. GREY,

Secy. to the Govt. of India, Home Dept.

CALCUTTA;
The 22nd January 1862.

Abstract of the Proceedings of the Council of the Governor-General of India assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., C. 67.

THE Council met at Government House, on Wednesday, the 29th January 1862.

PRESENT:

His Excellency the Viceroy and Governor-General of India, *presiding.*
His Honor the Lieutenant-Governor of Bengal.
His Highness the Maharajah of Puttiala, K. S. I.
The Hon'ble Sir H. B. E. Frere, K. C. B.
The Hon'ble Cecil Beadon.
Major General the Hon'ble Sir R. Napier, K. C. B.
The Hon'ble W. Ritchie.
The Hon'ble H. B. Harington.
The Hon'ble H. Forbes.
The Hon'ble C. J. Erskine.
The Hon'ble W. S. Fitzwilliam.
The Hon'ble D. Cowie.
The Hon'ble Rajah Deo Narain Singh Bahadoor.
The Hon'ble Rajah Dinkar Rao Rugonauth Moontazim Bahadoor.

STATE GRANTS.

The Hon'ble SIR BARTLE FRERE introduced the Bill for securing certain grants of immoveable property made by the State; and moved that it be referred to a Select Committee consisting of the Hon'ble Mr. Harington, the Hon'ble Mr. Forbes, the Hon'ble Mr. Erskine, and the Hon'ble the Rajah Deo Narain Singh.

The Hon'ble the RAJAH DINKAR RAO said, that the Government had power to make stipulations when it made grants, but this Bill was not necessary for the advantage of Government, and it was not necessary for the benefit of the subject. It was contrary to the usages of the people, and would only be acceptable to such as had contracted debts. Immoveable property would not be valuable to a man if he could not dispose of it either by mortgage or sale. The Bill exempted such property from process of the Civil Court, but it might be seized to liquidate a fine from a Criminal Court. If it

were alienable for such a purpose, it should be also in payment of just debts. Persons applied self-acquired property in charity, or works of public utility, or to reward dependents; and in times of difficulty would mortgage their property, but seldom would sell it. Under this Bill, however, they would have no power at all over immoveable property which had been granted to them.

The Hon'ble MR. ERSKINE said he had no objection to the principle of the Bill, and would only therefore observe, with reference to the arguments just urged, that the Rajah Dinkar Rao had not apparently given their full weight to two considerations: first, that the State, although it might, in making new grants, impose its own conditions on the grantees, could not, without the sanction of the Legislature, exempt any grant from the action of the Civil Courts; and secondly, that the Bill as now drawn could not be injurious to the creditors of old grantees; as it was provided that in such cases the State should interpose only with the consent of all concerned.

The Hon'ble MR. COWIE supported the principle of the Bill.

The Hon'ble MR. RITCHIE said that the Bill was considerably improved since it had been first drawn. Even now some amendments appeared to be necessary. The principle, however, was sound and just; namely, that such grants as were made to reward eminent public services should stand on a different footing from other grants. The object was to perpetuate a benefit to a family, and by perpetuating the memory of a loyal action to encourage posterity to emulate the example. But some relaxation might be required in the case of incumbents who had been so rewarded, but who were in embarrassed circumstances. The Bill at present prevented all assignments, except leases for seven years. He would suggest that incumbents might also alienate for the period of their own lives, and that execution might issue for the seizure of the life interest of an incumbent. This would be analogous to the provision in English Acts granting Annuities as rewards for services. In the Debate in the Legislative Council, it had been pointed out that the Bill perpetuated the entail though there should be a failure of the heirs specified in the grant. It appeared to be reasonable that, if such heirs failed, and the property devolved on collateral descendants, it should be held unfettered by restrictions.

The Hon'ble SIR R. NAPIER agreed with Mr. Ritchie both as to the principle and the necessary modifications.

The Hon'ble MR. BEADON thought that there were formidable objections even to the principle of the Bill. He agreed with the Rajah Dinkar Rao, that the object was not so much to perpetuate the memory of services, as to reward them in the manner most acceptable to the recipients. In most cases

a recipient would prefer to receive a grant unencumbered by restrictions, and it would be unseemly if the Government stepped in when the recipient was an embarrassed man, and declared his property exempt from seizure. He referred to the case in the North-Western Provinces, which had led the Lieutenant-Governor to apply for an Act of this nature. The circumstances of that case, he thought, pointed to a different conclusion. They rather showed that a mistake had been made in the nature of the reward granted to the Ressaldar in question, or that there should be a general law to save all land, except such as was not mortgaged, from seizure under process of the Courts. But the principle of this Bill, which went to exempt lands granted for services, and to treat the exemption as part of the reward, was open to doubt. Lands granted to support titles stood upon a different footing, and should be dealt with separately, as Sir Jamsetjee Jeejeebhoy's Estate Bill had been. He also noticed that the Bill made no provision for ultimately barring the entail, if the incumbent and the Government united in wishing to do so.

The Hon'ble the RAJAH DEO NARAIN SINGH said, that the grants contemplated by this Bill would not be generally acceptable, because they would not be in accordance with the customs of the country; and if so, they would not be valuable as rewards. If all power of alienation were taken away, the grant would assume the character of a Trust. Men had naturally a preference for liberty over every kind of restraint, and would not approve of restrictions in their property. If this Bill were passed, it should be provided that the conditions should be imposed with the assent of the grantees.

His Highness the MAHARAJAH OF PUTTIALA greatly approved of the object and principle of the Bill, because the honors conferred by the State would be firmly secured to the grantees and their families, and because the power derived from such grants would enable grantees to render good service to the State, and because their inalienability and security would render others more anxious to obtain such rewards for good service, and so a powerful bond of affection would be created between the Government and the subjects. He approved of the power of granting leases, though he thought it might lead to disputes in times of calamity, but the Collector might be authorized to adjust them. With reference to the power of the Governor-General to prescribe, in the grant, the course of descent, he thought that the rules introduced into the Cis-Sutlej States should be adopted for grants already made, and that in future grants the rule of primogeniture should prevail. He suggested an amendment in the 4th Section, which provided for the mode of enforcing payment of any claims not barred by the Act.

His Excellency the PRESIDENT said, that it appeared to be the general opinion that the Bill should be referred to a Select Committee, and he was himself in favor of that course. At the same time he felt that some new objections had been raised to the Bill, and that others had been stated in a manner more pointed than he had previously heard. On the part of the Government he must demur to the principle of the Rajah Dinkar Rao, that the only object of the Government in such grants was the benefit of the grantee. A great object was, as Mr. Ritchie had stated, the establishment, if possible for all time, of an example of eminent service rendered to the State, and of a conspicuous reward granted. The record in every such case should be made as enduring as possible. In England that course had been followed for at least a century and a half, as in the cases of the Marlborough and Wellington dignities and estates. Mr. Beadon had noticed the difference between grants with hereditary peerages and the ordinary rewards in this country. Exceptional as grants were at home, they could be dealt with specially. But here a general Bill authorizing the Government to impose conditions appeared to be necessary. The Rajah Deo Narain had said that such rewards would be of little value. But the Maharajah of Puttiala had justly considered that the contemplated stipulations would render the grants more honorable and acceptable. He thought that the Bill should be referred to a Committee, and further considered with their Report, and that full time should be given for consideration.

The Hon'ble the LIEUTENANT-GOVERNOR said, that he had no objection to the Bill being referred to a Select Committee, though he had some doubts on the principle of the Bill, and considerable doubts as to the details. He doubted if any grant should be entailed without an entail of some honor or title. If that were provided, he should not object. But this Bill would apply to all grants, whether there were titles or not. The Maharajah of Puttiala had said that future grants secured by this Act should descend under the rule of primogeniture. This, he had no doubt, would be very acceptable in the case of large grants, and he saw no objection to it in principle.

The Hon'ble SIR BARTLE FRERE said that this Bill might be considered from two points of view, that of the grantor, and of the grantee. The grantor (the State) parted with property for a certain purpose, and had no object but to secure that purpose, which was the perpetuation of rewards for good service. But the effect of the Bill might be to encourage improvidence. The cases of large grants intended as monuments of a Nation's gratitude were distinct, and might be dealt with separately from ordinary grants for good service. Looking at the Bill from the grantee's point of view, very little could be said for it. It would be inoperative, like all attempts to protect persons from the effects of their own improvidence; and the Rajahs Dinkar Rao and Deo Narain had

pointed out that conditional grants would not be acceptable. Looking back to our own history, it would be seen how inconvenient such an entailing measure would have been in the reign of Elizabeth or Cromwell, when grants of lands were numerous. His impression was, that great grants should be dealt with separately, and that it was unnecessary to interfere with smaller ones. The Bill had been brought in at the instance of the Lieutenant-Governor of the North-Western Provinces. Were it his own Bill, he (Sir Bartle Frere) would withdraw it. But acting in behalf of His Honor, he would wish to refer it to him before proceeding further; and, in the meantime, would move for leave to withdraw his motion, leaving it open to proceed with the Bill or not as the opinion of the Lieutenant-Governor might show to be desirable.

His Excellency the PRESIDENT stated, that the Rule did not provide for an amendment of this kind at the present stage.

After a brief discussion on the point of order, the Motion to refer the Bill to the Select Committee was put and agreed to.

FOREIGNERS.

The Hon'ble MR. BEADON introduced the Bill to make further provision relating to Foreigners, and moved that it be referred to a Select Committee consisting of the Hon'ble Mr. Ritchie, the Hon'ble Rajah Deo Narain Singh, and the Mover. He stated that the Bill only revived, for a period of two years, an Act which had expired; and as the interval between its expiration and renewal ought to be as short as possible, he proposed that the Committee should be instructed to submit their Report at the next Meeting.

The Motion was put and agreed to.

NEW COINAGE.

The Hon'ble MR. RITCHIE introduced the Bill to provide for a new Silver and a new Copper Coinage, and moved that it be referred to a Select Committee consisting of the Hon'ble Mr. Harington, the Hon'ble Mr. Fitzwilliam, the Hon'ble Rajah Deo Narain Singh, and the Mover.

The Motion was put and agreed to.

COURTS OF REQUESTS (STRAITS.)—MUNICIPAL ASSESSMENT (RANGOON, &c.)—EMIGRATION (SEYCHELLES.)

The Hon'ble Mr. FORBES postponed, till the next Meeting, the introduction of the following Bills:—

1st.—A Bill to enlarge the jurisdiction of the Courts of Requests in the Settlement of Prince of Wales' Island, Singapore, and Malacca.

2nd.—A Bill to extend certain provisions of Acts XIV and XXV of 1856 to the Town and Suburbs of Rangoon, and to the Towns of Moulmein, Tavoy, and Mergui; and for appointing Municipal Commissioners, and for levying rates and taxes, in the said Towns.

3rd.—A Bill relating to Emigration to the British Colonial Dependency of Seychelles.

PENAL CODE (CHAPTER XII) AMENDMENT.

The Hon'ble MR. RITCHIE moved for leave to bring in a Bill to amend Chapter XII of the Indian Penal Code, and to provide for certain offences against the coin. He stated that since the last Meeting, when he obtained leave to bring in a Bill for the protection of the Public against bad coin, it had been found more convenient to separate the Penal Clauses, and to embody them in a separate Bill as an amendment of the Penal Code. This was the Bill which he wished to introduce.

The Motion was put and agreed to.

BREACHES OF CONTRACT.

The Hon'ble MR. RITCHIE moved for leave to introduce a Bill relating to breaches of contract committed in bad faith. He said that the object of the Bill was, to provide proceedings of greater strictness in regard to the amount of damages, and the nature of the execution, to be awarded against defendants in Civil suits, who broke their contracts in bad faith, without reasonable excuse, after having received consideration for the same. A Bill had been brought into the Legislative Council last year, by the Hon'ble Mr. Beadon, for the punishment of breaches of contract of a particular class. It was framed on the Act of 1859 relating to laborers and artificers, which Act had been based on special legislation at Home relative to workmen and laborers. That Bill had been referred to a Select Committee; but soon after, a Despatch was received from the Secretary of State, objecting to the Bill, mainly on the ground that it dealt with breaches of Civil contract in a Criminal way. The Chairman of that Committee (Sir Barnes Peacock) had prepared a Report, in which he had stated that it was not desirable that the Bill should be passed in a shape to which the Secretary of State, to whom the power of disallowance had been granted by Parliament, objected; but that there was no reason why the Council should not give some relief, and he proposed that, in all such cases as were included in the Bill, when a Civil Court awarded damages, it might commit the defendant to the Civil Jail where he should maintain himself; or, if he were maintained by the Government, be kept to hard labor. Since that period the Government of India had come to the conclusion, that the principle of that recommendation should be adopted, but extended to all contracts in which a defendant had committed a breach after having received consideration. This would be less objectionable than a Bill confined to agricultural contracts; and a law dividing broadly between honest and dishonest debtors would be more consonant with just and sound legislation, than a law confined to a special class of persons. The Bill would provide that, when a defendant had received consideration for a contract and broken it, the Court, if it found that the contract had been broken in bad faith and without reasonable excuse, and

if the damages were not paid, might commit the defendant, for the period specified under the Civil Code, to Jail, where he should maintain himself, or be kept to hard labor, and should not be entitled to discharge, either under the discharge Clauses of the Civil Code, or an order of the Insolvent Court. The Bill was limited to cases of dishonest and wilful breaches of contract, and was not open to the objections which had been urged to the former Bill, inasmuch as it was not confined to any particular class of persons or of contracts; it did not submit contracts in which equities might have to be considered, to tribunals unaccustomed to deal with Civil suits; and its machinery could not be perverted to the purposes of oppression. It would include all the cases embraced in Mr. Beadon's Bill, and many others as important.

His Honor the LIEUTENANT-GOVERNOR stated that the Bill, as explained by Mr. Ritchie, appeared to be quite unobjectionable; and he should not have made any remark on it if he had not been strongly opposed to the Bill introduced last year. The two measures were so fundamentally different, that, while retaining his objection to the former Bill, he had no objection to the introduction of this.

The Hon'ble MR. BEADON said he had no hesitation in admitting that the present was a great improvement on the former Bill. It was more comprehensive, and not open to the objections to which the former was liable. It would be applicable to those contracts only in which a consideration had been given and received. He considered that the advance was the element that brought the case within the Criminal Law. But the Chief Justice had considered that that point was immaterial, and that the law should apply to all breaches of contract in bad faith. He (Mr. Beadon) considered, that the receipt of an advance gave the aspect of a Criminal breach of trust to a breach of contract, and that in many such cases Section 405 of the Penal Code, and the punishment in Section 406. would apply. By those Clauses, and Mr. Ritchie's Bill, he considered that every legitimate object was secured.

The Hon'ble MR. HARINGTON said that, in assenting to the present Motion, he did not consider that he was assenting to the principle of the Bill, which he considered to be, that in certain cases defendants in Civil suits should be kept in Jail at the expense of the State, and not at the expense of the plaintiffs. He quoted the 16th Rule, and stated that he apprehended that the discussion on the principle would be held at another stage.

The Hon'ble MR. RITCHIE in explanation said, that it was not proposed to extend the Bill to contracts in which no consideration in money, goods, or the like, had been given; and where the plaintiff's part rested in promise

only. On the other hand, the consideration need not be confined to money, but the Act would apply in the case of goods supplied by tradesmen; land let by andlords; as well as contracts made on advances by planters or Capitalists. The breaches of trust referred to in the Penal Code were those, in which a man having received money or property, under any contract or obligation to apply it specifically to a particular purpose, misapplied it. The breaches of contract which the Bill dealt with were those, in which a man received money or property, not necessarily for the purpose of applying the particular money or property to a specific purpose, but as a consideration for a promise on his part to perform some act as an equivalent.

His Excellency the PRESIDENT agreed with the Hon'ble Mr. Harington in his interpretation of the Rules. The question put was, whether there was a *primâ facie* case for a Bill. As to the principle of the Bill proposed, that would be affirmed or rejected when the Bill was introduced. Any Member who objected to the principle of the Bill could object to its going into Committee.

After a short discussion on the point of order, the Motion was put and agreed to.

ADMINISTRATION OF JUSTICE AT ADEN.

The Hon'ble MR. RITCHIE moved for leave to bring in a Bill to provide for the administration of Civil and Criminal Justice at Aden. He stated that the object of the Bill was to place the administration of Justice at Aden on a stable footing. The Penal Code supplied the Criminal Law, but it was necessary to declare the nature of the Civil Law that should be in force; to remove doubt as to the jurisdiction of the Resident sitting as a court; and to provide for an appeal to the Sudder Court at Bombay.

The Motion was put and agreed to.

HUMEERPORE BILL.

The Hon'ble MR. RITCHIE moved for leave to bring in a Bill to remove the District of Humeerpore in the North-Western Provinces from the operation of the General Regulations. He stated that this Bill was introduced at the instance of the Hon'ble the Lieutenant-Governor. Humeerpore was one of four Districts in the Division of Jhansi. Three of them were Non-Regulation Districts, and it was necessary to place Humeerpore on the same footing.

The Motion was put and agreed to.

WILLS ACT AMENDMENT.

The Hon'ble MR. RITCHIE moved for leave to bring in a Bill for the amendment of Act XXV of 1838 (relating to wills of persons whose personal property cannot by the law of England pass to their representatives without

Probate or letters of Administration). He stated that the Wills Act passed in the 1st year of Her Majesty applied here, and that all the formalities therein prescribed must be followed by British subjects. But a subsequent Amending Act of Lord St. Leonards had relaxed some of the strict technicalities, and it was intended to extend those amendments to this country. It would be open for consideration whether those relaxations might not be extended so far that it should no longer be necessary for the two witnesses to a Will to sign in the presence of each other.

The Motion was put and agreed to.

PROPERTY VESTED IN TRUSTEES AND MORTGAGEES.

The Hon'ble Mr. Ritchie moved for leave to bring in a Bill to amend and consolidate the law relating to the conveyance and transfer of property in India vested in Trustees or Mortgagees, in cases governed by English Law. He stated that its object was to extend to India the recent amendments in the Law relating to Trustees and Mortgagees which had been enacted in England, especially the Trustee Act of two years ago.

The Motion was put and agreed to.

POWERS OF TRUSTEES AND MORTGAGEES.

The Hon'ble Mr. Ritchie moved for leave to bring in a Bill to give Trustees, Mortgagees, and others, in cases governed by English Law, certain powers now commonly invested in Settlements, Wills, and Mortgages. He stated that the object was to extend to this country the provisions of the Act 23 and 24 Vic., C. 145, which greatly simplified the Law as to the powers of Trustees and Mortgagees.

The Motion was put and agreed to.

PROPERTY LAW AMENDMENT.

The Hon'ble Mr. Ritchie moved for leave to bring in a Bill to further amend the Law of Property, and to relieve Trustees in cases governed by the English Law. He stated that the object was to extend to India the provisions of the Act 22 and 23 Vic., C. 35, so far as they were applicable.

The Motion was put and agreed to.

PARTITION OF ESTATES.

The Hon'ble Mr. Harington moved for leave to bring in a Bill to consolidate and amend the law relating to the partition of estates paying Revenue to Government in the North-Western Provinces of the Presidency of Fort William in Bengal. He stated that the object was to amend the law relative to the partition of estates paying Revenue to Government. The present law was defective in respect of a numerous class of estates in the North-Western Provinces of Bengal, the property of two or more persons, the lands comprised in which were held partly in severalty, and partly

in common. The wording of the present law precluded the application of its provisions to that description of estates, and even the lands in such estates as were held in common tenancy were not divisible under it. A more serious objection to the present law was to be found in the extremely dilatory character of the procedure which it prescribed. The present Bill had been approved by the Sudder Court of the North-Western Provinces, and legislation on the subject had been undertaken at the instance of the Lieutenant-Governor of those Provinces. As Bengal was to have a separate Council, he had confined the provisions of the Bill to the North-Western Provinces.

The Motion was put and agreed to.

The Council adjourned till Wednesday, the 5th of February, at 11 A. M.

M. WYLIE,

Depy. Secy. to Govt. of India, Home Dept.

CALCUTTA;
The 29th January 1862.

Abstract of the proceedings of the Council of the Governor-General of India assembled for the purpose of making Laws and Regulations under the Provisions of the Act of Parliament 24 and 25 Vic., C. 67.

THE Council met at Government House, on Wednesday, the 5th February 1862.

PRESENT :

His Excellency the Viceroy and Governor-General of India, *presiding.*
His Honor the Lieutenant-Governor of Bengal.
His Highness the Maharajah of Puttiala, K. S. I.
The Hon'ble Sir H. B. E. Frere, K. C. B.
The Hon'ble Cecil Beadon.
Major General the Hon'ble Sir R. Napier, K. C. B.
The Hon'ble W. Ritchie.
The Hon'ble H. B. Harington.
The Hon'ble H. Forbes.
The Hon'ble C. J. Erskine.
The Hon'ble W. S. Fitzwilliam.
The Hon'ble D. Cowie.
The Hon'ble Rajah Deo Narain Singh Bahadoor.
The Hon'ble Rajah Dinkar Rao Rugonauth Moontazim Bahadoor.

FOREIGNERS.

THE Hon'ble MR. BEADON presented the Report of the Select Committee on the Bill to revive and continue in force for a further period Act XXXIII of 1857 (to make further provision relating to Foreigners,) and gave notice that he would at the next Meeting move that the Bill be taken into consideration and passed.

EMIGRATION (FRENCH COLONIES.)

The Hon'ble MR. RITCHIE introduced the Bill for the amendment of Act XLVI of 1860 (to authorize and regulate the emigration of Native Laborers to the French Colonies), and moved that it be referred to a Select Committee. He said that the object of this Bill was simply to adapt the law already passed, to an alteration made in the Convention with the Emperor of the French. He would propose that the Select Committee should be in-

structed to report within one month. The alteration in the Convention was not material, and this period would be sufficient for the publication and consideration of the Bill in Madras and Bombay.

The Motion was put and agreed to.

STAMP DUTIES.

The Hon'ble MR. HARINGTON introduced the Bill to consolidate and amend the Law relating to Stamp Duties, and moved that it be referred to a Select Committee with instructions to report within a fortnight. He stated that the Bill had been introduced into the Legislative Council and already published.

The Hon'ble MR. RITCHIE said that a fortnight would be rather scanty time. The Bill in its present shape contained some new provisions which had not yet been published, and ample time should be afforded for their consideration.

The Hon'ble MR. HARINGTON said that the Bill, containing the most important of the alterations proposed in the existing law had already been published, and that, where any change had been made subsequently to the publication of the Bill, it would be found to be almost always of a mitigating character and in favor of the public. But he never contemplated that the Bill should pass into law until ample opportunity had been given to the communities of Madras and Bombay, as well as Bengal, to know what was proposed, and to offer any opinions or suggestions upon the various provisions of the Bill. For this purpose it was his intention to propose that the Bill should be re-published for a certain time as soon as it had gone through the Select Committee and a Committee of the whole Council, but before it passed into Law and came into operation. He thought that the interval would be ample for the public to make themselves acquainted with the Bill and to offer any observations upon it.

His Excellency the PRESIDENT said that there could be no doubt as to the desireableness of full publicity being given to this Bill. The Rules of Business provided for a pause in the proceedings after the Report of a Select Committee was received, but they did not contemplate a Bill passing through a Committee of the whole Council. Under the 17th Rule the Council could suspend the publication of a Bill till after report by a Select Committee, and after the presentation of the Report, might pause before it was taken into consideration.

The Hon'ble MR. HARINGTON suggested that the Bill might be republished after it was considered by the Select Committee. He consented to the motion being altered by the substitution of the period of one month for a fortnight.

The Motion was put and agreed to, and His Excellency the President declared Rule XVII to be suspended.

GOVERNMENT SEAL

The Hon'ble Mr. Erskine introduced the Bill to amend the Law relating to the use of a Government Seal, and moved that it be referred to a Select Committee with instructions to report in a fortnight. He stated that the Bill had already been published and postponed for a considerable time.

The Hon'ble Mr. Ritchie stated that the Bill was purely of a formal character, and he thought that the time proposed by Mr. Erskine would suffice in this case.

The Motion was put and agreed to.

WHIPPING BILL.

The Hon'ble Mr. Beadon moved for leave to bring in a Bill to authorize the punishment of whipping in certain cases. He stated that the Bill was in most essentials a reproduction of the Bill passed last year by the Legislative Council. The principle almost unanimously adopted by that Council was, that the punishment of flogging was in some cases absolutely necessary, but there had been some difference of opinion as to the particular crimes for which the punishment might be inflicted, and as to the mode of its infliction. In framing the present Bill he had desired to depart as little as possible from the conclusions at which that Council had arrived. As to crimes, he had adhered precisely to the catalogue in the Bill passed by the Council, except in having added Dacoity. When his Bill was submitted to a Select Committee, probably some other offences might be added, and the punishment might be deemed inapplicable to some which he had included. As a general rule, he thought the punishment should be confined to cases of a degrading nature and to habitual offenders. He had used the term *whipping* as being more in accordance with recent Acts of Parliament and with the actual mode in which the punishment would be inflicted. In no case would it be obligatory on a Court to order the punishment, but the Bill would be permissive only. He proposed to substitute a cat-o'-nine-tails for the rattan as the instrument of punishment, as there would be less danger of permanent injury; and the punishment being lighter, the maximum strokes would be increased to fifty. In the case of juvenile offenders under the age of sixteen, he would adopt the mode of punishment in force in Bengal. A Clause had been added to provide for the case of a Medical Officer forbidding the infliction of the punishment. The offender in that case might be kept in prison by the Court, for a period in addition to any period named with the whipping, but the entire period of imprisonment should not exceed that prescribed by the Penal Code for the offence. The Bill would not affect any existing provisions for Jail discipline.

The Hon'ble Mr. Cowie said that he was opposed to all Corporal punishment, except in the case of juvenile offenders.

His Excellency the President stated, that he wished to advert to the reasons why the Bill passed by the Legislative Council had not received his

assent. As that Council had not met again for the transaction of business, he had not had an opportunity of communicating his sentiments. He had no doubt on the point of principle, but there were serious defects in the details of the measure. The definition as to age was very vague and not sufficient as a guide to the Courts. There appeared to be too much detail, and that not of a very judicious character, as to the mode of inflicting the punishment. Security was wanting for a safe and judicious Medical supervision, and there was an absence of a provision, so desirable in all such cases, for the exercise, at any rate to some extent, of the discretion of the Local Government. The present Bill, he believed, would be found to be a considerable improvement on the former.

The Motion was put and agreed to.

RELIGIOUS ENDOWMENTS.

The Hon'ble Mr. Beadon moved for leave to bring in a Bill to enable the Government to divest itself of the management of Religious Endowments. He stated that this Bill was the last of a series of measures taken by the Government during several years for divesting itself of the management of religious trusts. The subject had led to much correspondence in this country and with the Home Government, but it was only necessary for him to advert to a Despatch of the Secretary of State in 1860, directing the repeal of Regulation XIX. 1810 of the Bengal Code, and Regulation VII. 1817 of the Madras Code, and the transfer of the institutions, now superintended by the Local Agents, to trustees subject to the jurisdiction of the Courts. In accordance with the terms, though not with the spirit of that Despatch, a Bill had been introduced, the whole scope of which was to repeal those Regulations, and to provide that the Civil Courts should have jurisdiction in all cases arising out of these trusts. That Bill had been strongly opposed in Madras and the North-Western Provinces. There had been two classes of objectors. *First*, there were those who thought that the Government should simply repeal the Regulations, and leave all the institutions, now superintended by Government, to take care of themselves. But such persons seemed to be forgetful of the obligations already contracted, and that the course they recommended would be scarcely consistent with good faith. *Secondly*, there were those who thought that special provision ought to be made for the superintendence of these trusts, as for instance, by the establishment of some Board, which should be authorized to deal with all cases connected with them, without reference to the Civil Courts. The present Bill was drawn more in accordance with the Despatch, by giving jurisdiction to the Civil Courts in cases of misfeasance.

There were two classes of institutions to be dealt with,—some, in which the managers were elected by the persons interested, without any confirmation from Government; and others, in which the Government had to nominate the managers. As to the first class, the object in view was attained by a repeal of the Regulations, and by providing that the managers should be responsible

to the Courts. As to the other class, he proposed that the Government should once for all nominate a Committee from among the persons interested in each trust, vesting in that Committee all the powers now exercised by the Sudder Board or the Local Agents, but rendering such Committee subject to the Civil Courts. The Committee would henceforward be self-elected, that is, on the occasion of any vacancy the remaining members might elect; but in the event of their failure to do so, any person interested in the trust might apply to the Civil Court to nominate a successor. He thought that there was a wide difference between the Government by its Officers sanctioning every appointment, and the Civil Courts interfering, on the special application of persons interested, to nominate a trustee, on those rare occasions in which such interference would be necessary.

The Motion was put and agreed to.

KING OF OUDE BILL.

The Hon'ble Mr. Beadon postponed till next week his motion for leave to bring in a Bill to provide for the service of legal process issued against His Majesty the King of Oude, and for taking the examination of His said Majesty when required as a witness.

MARRIAGE BILL.

The Hon'ble Mr. Ritchie moved for leave to bring in a Bill further to provide for the marriages in India of persons professing the Christian Religion. He said that the object of the present Bill was to put an end to the uncertainty respecting the validity of certain marriages in which one or both of the parties were Christians. At present there were three modes by which marriage might be contracted, one of which was peculiar to one particular body of Christians. The first was that in which a person in Holy Orders was present. No particular rite or form was necessary, but by a person in Holy Orders was meant in legal sense a person Episcopally ordained, no other person ranking higher than a Layman. This was the mode required by the Common Law, but it was doubtful if the necessity for it extended to this country. The second was that under the Statute which scantioned marriages by Clergymen of the Established Church of Scotland, being Chaplains. That Statute had in 1860 been extended to Clergymen of that Church though not Chaplains. This was the mode applicable to one body of Christians only. A third mode was authorized by the Indian Marriage Act of 1852, under the authority of which an Act had been passed in this country. Previously to that Act great doubts had existed as to whether the Common Law with respect to marriage, prevailed out of England. But the great case of the Queen *versus* Millis had decided that it extended at any rate to Ireland. The Indian Marriage Act did not clear up the doubt whether it extended to this country, for it simply declared all marriages to be valid, which had been previously solemnized, in which the only defect was the absence of a person in Holy Orders, and provided for marriages before Registrars; but it did not determine the question as to the validity of future marriages not soleminized under that Act or

without the presence of a person in Holy Orders. Sir Erskine Perry and Dr. Lushington were of opinion that the decision in the Queen *versus* Millis could not apply to countries in which, at the time of the introduction of English Settlers, there were no persons in Holy Orders who were available for the purpose of attending marriages. But the Court of Exchequer had decided that the case did affect marriages in Beyrout. There was therefore considerable uncertainty; and numerous frauds had been committed in this country by persons solemnizing marriages under an assumed authority. One reason why that uncertainity continued, probably was that the Legislative Council could not amend the Indian Marriage Act, as that was an Act passed after the 3 and 4 William IV. But he now proposed to provide that no marriage between Christians should be valid, unless solemnized in the presence of a person in Holy Orders, under the Scotch Marriage Act, or under the Indian Marriage Act, before a Registrar. At the same time he would declare valid all past marriages the only defect of which was non-compliance with those conditions.

The Motion was put and agreed to.

DISSOLUTION OF MARRIAGE (CHRISTIAN CONVERTS.)

The Hon'ble Mr. RITCHIE postponed his motion for leave to bring in a Bill to provide for the dissolution, in certain cases, of marriages entered into by Converts before their conversion.

FRAUDULENT TRANSFERS AND SECRET TRUSTS.

The Hon'ble MR. RITCHIE moved for leave to being in a Bill for the prevention of Fraudulent transfers of property and of Secret Trusts. He stated that this Bill was of the same nature as that introduced into the Legislative Council by Sir Arthur Buller. The object was to obviate as far as possible the mischiefs arising from secret and fraudulent Trusts. But the provisions of this Bill would differ from those of the former Bill, in respect of the omission of the Penal Clauses, which were now provided by the Penal Code, and would only deal with the Civil rights of the parties. The Bill would provide that, when any interest in real property was transferred without a declaration of trust, it should be held without any trust, and that the transferee should hold against all, except creditors and the persons whom the transfer might be intended to defraud. The Courts then would be relieved from the necessity of giving to any instrument an effect different from that which it appeared to be meant to have. Instruments in certain cases would be required to be accompanied by a memorandum. Requiring witnesses was of little value, as any number of witnesses might often be obtained.

The Motion was put and agreed to.

BRANCH RAILWAYS, TRAMWAYS, &c.

The Hon'ble MR. RITCHIE moved for leave to bring in a Bill to provide for the construction, by Companies and by private persons, of Branch Railways, Iron Tram Roads, Common Roads, or Canals, as feeders to Public Railways, Canals, or Roads, or to Navigable Rivers. He stated that a Bill similar to this had been introduced into the Legislative Council

by Mr. Seton-Karr, but that Bill was confined to feeders to Railways. The present Bill would be extented to Roads, Canals, and Navigable Rivers. He had some doubt with respect to Roads, but would introduce the provision into the Bill, subject to consideration. The only difficulty that arose was from His Honor the Lieutenant-Governor of Bengal having given notice of Mr. Seton-Karr's Bill being proceeded with in the Bengal Council. In some respects it might be advantageous that there should be local legislation on the subject. But on the other hand, as a Railroad for which feeders were to be provided might pass through several Districts in different Presidencies, two different Acts might be objectionable. He had ascertained from His Honor the Lieutenant-Governor that, in his judgment, general legislation would be preferable. But at present he would confine himself to obtaining leave to introduce the Bill, and would ascertain what course it would be expedient to follow.

The Motion was put and agreed to.

The following Select Committees were named :—

On the Bill for the amendment of Act XLVI of 1860 (to authorize and regulate the Emigration of Native Laborers to the French Colonies)—the Hon'ble Messrs. Ritchie, Forbes, and Cowie.

On the Bill to consolidate and amend the Law relating to Stamp Duties—the Hon'ble Messrs. Laing, Ritchie, Harington, Forbes, Erskine, Fitzwilliam, and Cowie, and the Hon'ble Rajah Dinkar Rao Rugonauth Moontazim Bahadoor.

On the Bill to amend the law relating to the use of a Government Seal —the Hon'ble Messrs. Ritchie, Harington, and Erskine.

The Council adjourned till Wednesday, the 12th Instant, at 11 A. M.

CALCUTTA;
The 5th February 1862.

M. WYLIE,
Deputy Secy. to Govt. of India, Home Dept.

Abstract of the Proceedings of the Council of the Governor-General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic. C. 67.

THE Council met at Government House, on Wednesday, the 12th February 1862.

PRESENT :

His Excellency the Viceroy and Governor-General of India, *presiding.*
His Honor the Lieutenant-Governor of Bengal.
His Highness the Maharajah of Puttiala, K. S. I.
The Hon'ble Sir H. B. E. Frere, K. C. B.
The Hon'ble Cecil Beadon.
Major General the Hon'ble Sir R. Napier, K. C. B.
The Hon'ble S. Laing.
The Hon'ble W. Ritchie.
The Hon'ble H. B. Harington.
The Hon'ble H. Forbes.
The Hon'ble C. J. Erskine.
The Hon'ble W. S. Fitzwilliam.
The Hon'ble D. Cowie.
The Hon'ble Rajah Deo Narain Singh Bahadoor.
The Hon'ble Rajah Dinkar Rao Rugonauth Moontazim Bahadoor.

FOREIGNERS.

The Hon'ble MR. BEADON moved that the Bill to revive and continue in force for a further period Act XXXIII of 1857 (to make further provision relating to Foreigners) be passed.

His Excellency the PRESIDENT said that, as no amendment had been made in the Bill as settled by the Select Committee, it could now be passed under Rule 27.

The Motion was put and agreed to.

BANK OF BENGAL.

The Hon'ble MR. RITCHIE introduced the Bill for regulating the Bank of Bengal, and moved that it be referred to a Select Committee. He said that a few alterations would be proposed in the Bill, and he proposed that

they should be published with it. The most important of these was a power to the Bank to take over the business of any local Bank, and to increase its Capital beyond that limit of double its present Capital, which the Bill, as at present drawn, provided. This amendment had been proposed by the Directors, and the Government saw no objection to its adoption. The second amendment was a merely formal one, namely the repeal, so far as the Bank of Bengal was concerned, of the Act XXVII of 1835. That Act was now no longer necessary. The third amendment would be a provision that no two partners of any one Firm should be Directors of the Bank at the same time. The Clause would extend to any one partner in conjunction with any person holding a procuration from the same Firm, the object being to secure as independent a representation of the shareholders in the Direction as possible. He would propose that the Committee should report in a fortnight, as the period during which the Bank could continue to issue its notes would expire on the 1st of March; and the other alterations in the Bank's Charter were not so material as to require a lengthened publication.

The Motion was put and agreed to.

BREACHES OF CONTRACT.

The Hon'ble Mr. Ritchie introduced the Bill relating to Breaches of Contract committed in bad faith, and moved that it be referred to a Select Committee.

The Hon'ble Mr Harington said, that he would preface the observations which he deemed it right to address to the Council on the motion for the introduction of this Bill, by saying that, whatever were his own views on the subject of the Bill, it was not his intention, unless he found from the course taken by the debate on the present motion that the majority of this Council was with him, to oppose the motion for the reference of the Bill to a Select Committee or its immediate publication for general information. He might however consider it consistent with his duty, should the Bill ever go to Committee, to propose an amendment in some of its provisions. He rejoiced at the abandonment of the Bill of last year, because he believed it to be opposed to sound principles of legislation; and he had a strong conviction that had that Bill passed into law, it might have been perverted, as the Statement of Objects and Reasons of the present Bill stated, into an instrument of extortion and oppression. He believed also that, instead of assisting, it would have injured those for whose special benefit it was designed. He heartily sympathized with those persons, and was most willing and anxious to afford them every relief which legislation could properly give. Nothing had occurred since the Bill of last year was discussed, to alter the opinion which from the first he had formed of it. The present Bill, rightly as he thought, excluded the jurisdiction of the Criminal Courts altogether, and confined the jurisdiction to Civil Courts, which alone were competent to deal with the equities that must constantly arise in questions respecting contracts.

The imprisonment, too, provided by the present Bill would be in the Civil, and not in the Criminal Jail, and the defaulters would thus be saved from association with the most degraded classes of offenders and from all the contaminations of the Criminal Jail. To these provisions of the present Bill he could of course have no objection. Indeed the present Bill was comparatively of so mild and gentle a character, that if it would not greatly benefit those for whose advantage it was designed—and truth compelled him to say that he did not think it would benefit them in the slightest degree—on the other hand the persons who were the objects of the Bill might so easly avoid its most stringent provision by an outlay of 1 Rupee or 1 Rupee 8 Annas a month, that he felt some compunction in saying a word against the Bill. But the Bill involved a very important principle. They were now called upon, he believed for the first time, to assent to the principle that, in certain actions of debt and damage, Judgment Debtors might be imprisoned in default of payment of penal damages, at the expense of the State. They were asked to affirm the proposition that the dieting of such persons at the public expense was a legitimate charge on the revenues of the country. Were they prepared to assent to this proposition? Were they prepared to compel the Government of India to include this item of expenditure in its future Budgets? Was it a charge that had been provided for in the Budget of next year? There was no analogy between Criminal cases and the cases to which this Bill would apply. In Criminal cases the prisoners were rightly imprisoned at the public expense, for they were imprisoned for the protection and therefore for the benefit of the public at large. But the imprisonment of private debtors stood on an entirely different footing. The case of a fraudulent Bankrupt might be quoted in support of this Bill; but a fraudulent Bankrupt was regarded as a public cheat or swindler who went about preying on the public, and his imprisonment at the public expense was defended or justified on that ground. Assuming, however, the principle of this Bill to be unobjectionable, he would ask, why was it restricted to cases of Contract in which consideration had been given? Mr. Ritchie had referred to a Bill prepared by the learned Chief Justice, and said it was considered right to carry out the principle of that Bill to its legitimate extent. But if that principle were carried out to its legitimate extent, the Bill must apply, not only to Contracts on which some consideration had been paid, but also to all other Contracts and to all actions of tort. If the Bill could be rightly applied to actions of Contract, why should it not be applied to actions in which damages were given for adultery, for defamation, and personal injuries? He would ask if any calculation had been made as to the number of cases in which, as the Bill now stood, the Courts would have to exercise a discretion in carrying out this Bill. 2,50,000 cases a year was a low estimate. In the Calcutta Court of Small Causes alone there were between 30,000 and 40,000 cases instituted yearly, to a great portion of which the provisions of this Bill might apply, and he would ask if

they were prepared to throw upon the Judges of that Court and upon every Judge in the country, the obligation and responsibility of determining in every suit of a Breach of Contract falling within the provisions of this Bill, whether there had been bad faith and a want of reasonable excuse or a wilful withholding or a wilful not doing from interested motives? He would take the case of a lady ordering a dress and paying for it with money with which she ought to have discharged a Bill of another Milliner of long standing; was she to be liable to penal damages, and in default of payment to hard labor? Referring to the 12th paragraph of the Statement of Objects and Reasons, he apprehended that the Bill applied to a case of that nature. Such a law might be right in theory, but he questioned the expediency of reducing the theory into practice. The law was of general application and would have to be administered by Native Judges of every grade throughout the country, who might assess penal damages against European British subjects, and declare them liable to imprisonment which might extend to two years with hard labor. The question arose, where were such prisoners to be confined, and what was to be the nature of the labor exacted from them? He would ask, what was the cause of this violent change in our legislation? The only reason he could discover was that a few months ago a system, which did not rest on the only sound foundation, *viz.*, the basis of mutual interest, broke down. But was it an adequate reason for imposing this Bill on the whole country, that things had gone wrong in two or three Districts in Lower Bengal? Surely it would be better to leave time and self-interest, aided by common sense, to work the remedies for the present state of things in those Districts. He would ask if any enquiry had been made as to what might be the cost of carrying out this Bill. The report upon the Jails in the Lower Provinces showed that the average gross cost to the State of each criminal prisoner was 39 Rupees 8 Annas a year, the average net cost 28 Rupees 2 Annas, which under favorable circumstances, never likely to occur in the case of Civil Prisoners, might be reduced to 20 Rupees. There would be, therefore, a large expenditure for the Native prisioners confined at the expense of the State, and in the case of European prisoners the cost would be greater. Then in Civil Jails no means existed for employing prisoners in a manner to render their labor remunerative, and workshops would be required, and instructors and extra guards. Having thus discussed the principle and shewn, as he thought, that no adequate reason had been assigned for the introduction of the Bill, and that it might prove very burdensome to the public Revenues, he would enquire if it would satisfy those on whose behalf it was understood to have been introduced. A loud cry had been raised for a Criminal Contract Law which was to be the panacea for all that had been amiss in the Districts to which he alluded, and elsewhere; to make dishonest men honest, bring out Capitalists from Europe, and so aid in the development of the resources of the country. He was surprised at that cry, but he was not astonished at its gradually dying away. He hoped that this Bill would not revive it. He should

be disposed to symyathize in the disappointment which, no doubt, would be felt by those who were so clamorous for criminal contract law, when they saw this Bill, and found it so different from what they expected, were he not assured that a Bill, such as they asked for, would do them harm rather than good. He felt that it would be better for those persons to trust more to their own resources and to the remedies for the existing state of things at which he had hinted, they taking ordinary precautions and being fairly liberal in their dealings with the Natives, rather than press for legislation which could do nothing towards amendment, and if it did not prove absolutely injurious, would probably be wholly inoperative. It was expected that Act XIII of 1859 would do great good in Calcutta. But what had been the result? He had made enquiries from some very respectable European and Native Tradesmen in Calcutta, and he was assured that, in the direction intended, the law had done no real good. Upon the first introduction of the Act they said they had instituted two or three cases under it, but the result had been so unsatisfactory that they had given up having recourse to the Act, and were now endeavouring to put a stop to the system of advances which appeared to be at the root of the evil which Act XIII of 1859 was intended to cure. He thought it would be a great misfortune if the introduction of this Bill fostered or encouraged the keeping up of a system which had proved so pernicious and which had been so universally condemned. He presumed that, if this Bill passed into law, Act XIII of 1859 would be repealed. He did not think the two laws could co-exist. The same remark seemed to apply to a Clause which he understood it was proposed to add to Act X of 1859 (the Rent Law) allowing an award of penal damages in certain suits for the recovery of an arrear of rent. He had alluded to the penal damages which might be awarded in certain circumstances by the Civil Courts under this Bill. He thought that this provision might prove very oppressive. Take the following case—A party contracted with another party to supply him with a certain quantity of Sugar, of a certain quality, at a certain price, within a certain period, and it was conditioned that, on failure to fulfil any part of the engagement, the Contractor should pay twice the amount he was to receive for the Sugar. A great rise took place in the price of Sugar, and the Contractor found it more for his interest to pay the penalty agreed upon, than supply the Sugar at the price contracted for. He was willing to pay the penalty, but the Co-contractor, not satisfied therewith, instituted a suit under this Bill, and there having been a wilful failure to fulfil the Contract from motives of interest, obtained a decree for penal damages, on account of which the Judgment Debtor, would be liable, in default of payment, to be imprisoned with hard labour. He was willing to pay the penalty, but he was unable to pay the damages assessed by the Court. In such a case he thought injustice would be done under the Bill. Very great misapprehension prevailed both at home and in this Country in respect to the Code of Civil Procedure in

accordance with which suits were conducted in India, and as to the remedies provided by the existing law in cases of breaches of Contract and the like. Many persons seemed to imagine that no redress was obtainable under the existing law in such cases, or that it was obtainable only after very long and protracted litigation, in fact after something very like a Chancery suit. The misapprehension had created a great prejudice against the Indian Courts and against our Civil system generally, and had proved otherwise mischievous. It had appeared to him, therefore, that he should be doing useful service if he brought together, in a brief and convenient form, the various provisions of the existing laws on the two points which he had mentioned. The result of his labors would be found in a paper which, with the permission of the Council, he would lay on the table of the Council. He thought that, on reading that paper, every one who had any knowledge of law, or had had any experience in the administration of Justice, would be surprised, not that the Law had done so little, but that it had been able to do so much for persons complaining of breaches of Contract. That paper would shew that any thing more unlike a Chancery suit than an action for debt or damage for a breach of Contract carried on under the Code of Procedure now in force, could scarcely be imagined. It would be seen that all mere technicalities and forms, not necessary to secure a degree of regularity, had been excluded, and that substantial Justice, to be speedily afforded, was what had alone been aimed at in framing the Code. He thought that, if the persons who had occasion to institute suits of the nature of those to which this Bill was intended to apply, would make themselves acquainted with the provisions of the existing law, as detailed in the paper prepared by him, and avail themselves of those provisions as occasions arose, they would find that there was already enough of good law for all useful and practical purposes, and that this Bill might be properly and safely dispensed with.

The Hon'ble RAJAH DINKAR RAO said, he thought there was no necessity for this Law, for it was the duty of a person entering into a Contract to contract with a fit man and to take proper security. If after this there were a breach, the complainant had a remedy for damages under Act VIII of 1859, or he might proceed under Section 415 of the Penal Code.

The Hon'ble MR. ERSKINE said, that he regretted to find that he differed considerably both from Mr. Harington and Mr. Ritchie, and expressed a hope that, if the Bill were allowed to go to a Committee, it would be the duty of that Committee to report, not merely on the precise Clauses, but generally on the remedies at present provided by Law in cases of fraudulent Breaches of Contract and on the different amendments of the Law which had recently been proposed. This was the third measure on this subject which had been submitted to them within 12 months, and the Legislative Council

should therefore attempt more than a partial solution of the question. A full solution could not be expected at once, but could only be effected by fair reasoning, experience, and the growth of settled public convictions. Indeed the present Bill itself re-opened the whole question, and obliged the Council to consider whether the Criminal Law was sufficient, whether the Civil Law was sufficient, or, if they were defective, whether the present Bill met those defects. The Penal Code had effected great improvements in this as in other branches of the Criminal Law, by providing not only for Cheating and Criminal breaches of trust, but also for the fraudulent transfer of property, the malicious destruction of property, and the dishonest misappropriation of property. But while he acknowledged the great improvements effected by that Code, he believed, without disrespect to its distinguished framers, that it might be still further improved, and that experience would enable them in some respects to improve it. He would allude at present to one particular class of cases only, in connection with which there had recently been much discussion. Suppose that a cultivator had contracted to cultivate a crop on stated lands; that he had made this Contract with a full intention to perform it; but that subsequently he was led to break it, either from animosity or greed of gain. He might know well that he could not effect gain to himself except by inflicting injury on the other party, and might nevertheless break faith, sell his produce, abscond with the money, and leave nothing but his land heavily mortgaged. In that case no punishment was provided. One reason why the framers of the Code had not provided a punishment, probably was that the property was not in the legal possession of the person with whom the Contract had been made, and that the Law would not pursue it in order to enforce restitution. This was good as a rule to discriminate between offences, and to define what should be dealt with as theft or breach of trust and what should not be so treated. But it was not good as a rule to discriminate acts which should be deemed offences, from those which should not. He knew of no test which could rightly be used for this purpose, except the great rule of the general welfare; and so long as a person who indirectly injured the prospects of another by the publication of a malicious statement was punished as a Criminal, he saw no reason why a person should not be so punished, who knowingly and directly injured or ruined another by breaking in bad faith his formal obligations to him. The decision of the Council as to the propriety of making such acts penal, might also be affected by their decision on the proposal in Mr. Sconce's Bill to give a Contractor a lien on the crop for which he had advanced. But to take another instance. Suppose that the cultivator already referred to, instead of fraudulently transferring his crop, had maliciously destroyed it. There was stringent provision against malicious mischief in the Penal Code. But on looking at the commentary of two learned friends of the mover of this Bill, he found that they expressed a doubt whether this provision of the Code applied to the very class of cases now instanced. This uncertainty should not remain. Or to take one other instance; the cultivator

might neither transfer nor destroy his crop, but might maliciously leave his land uncultivated, demonstrably for the purpose of injuring another. This might occur in scores of cases at the same time in the same neighbourhood, and all might be clearly the result of animosities excited by one emissary, whom there was no means of punishing for instigation or abetment, as the substantive acts were not offences. These illustrations would suggest why he thought it would not be an unprofitable task to go over the Sections of the Penal Code bearing on this subject, with a view to consider what amendments were desirable. He thought some enquiry the more necessary, as facts relative to the Bill introduced last year had to some extent been misapprehended, and the proceedings of the Legislative Council on it were not sufficiently explained in the present Statement of Objects and Reasons. The Legislative Council did not allow that Bill to be published for general information, but referred it to a Select Committee, with authority fully to recast, and those who voted for its second reading pledged themselves only to the principle that some revision and extension of the Law respecting fraudulent Breaches of Contract seemed desirable. Nevertheless arguments which might be valid against that Bill as originally drawn, had been quoted as though they were equally valid arguments against every kind of Penal legislation in that direction. But this was an illegitimate assumption. It might be true that the former Bill was not restricted with sufficient clearness to cases of bad faith, and that it was open to some extent to a charge of one-sideness, and that it did not sufficiently discriminate obligations arising from the status of servants and provisions justified by the analogy of the law of Master and Servant, from those relating to contracts between independent persons. Moreover the provisions of that Bill respecting registration were confessedly insufficient. These objections might be quite valid against the special measure proposed last year, but of no validity as objections to a careful extension of the Criminal Law in another form. The general arguments against any such extension did not seem to be of much weight. Mr. Harington objected that any such extension would be retrogade and hostile to the spirit of recent legislation. But this, he apprehended, was a misapprehension. The spirit of modern jurisprudence was hostile to excessive severity, to such punishments as the pillory, and to the punishment of death for theft or forgery. But the number of Criminal offences as against property and credit and general trade had not been recently diminished. On the contrary, as the standard of morals rose in the community, the public conscience condemned a larger number of such acts; and as trade advanced, the danger of offences against commercial morality was more recognized. It was more clearly felt in such cases that the loss of one was the danger of many. And thus recent legislation had manifested itself in regard to frauds, fraudulent bankruptcy, and reckless insolvency. There were also reasons for some reconsideration of the Civil Law on this subject, and the Committee should not be restrained from reporting on them. He concurred with Mr. Harington that the Civil Procedure Code had effected a great

improvement in the administration of justice, and perhaps in regard to regular suits little more was required. But it might be necessary to provide for the granting of summary injunctions to restrain from Breaches of Contract without suit—as in the case of a man not preparing to cultivate a certain crop for which he had contracted, but making preparations to cultivate a different one. Indeed it would be remembered, that Mr. Sconce had argued very earnestly that the Civil Courts would probably not grant decrees for specific performance of contracts to cultivate, since they could not enforce execution of such decrees. It might be better that an injunction should be issued in anticipation of a Breach of Contract. There were other proposals of Mr Sconce's which had been allowed silently to disappear. For instance, that of a Plaintiff being sometimes put in possession of a crop, or in possession of land in which a crop was to have been cultivated. These propositions might be good or might not, but they ought not to be ignored. Mr. Sconce's proposition, that a Contractor should have a lien on the crop grown for him, had been noticed and supported by the Chamber of Commerce at Bombay ; and even the Government there, though generally opposed to the proposed legislation of last year, observed that this particular remedy was only that with which the Government armed its own Collectors for the recovery of Revenue. He would submit that all these propositions should not be silently set aside. He must refer in conclusion to some of the details of the Bill. The first definition, that of "bad faith," went farther than was proposed even by many who asked for a Criminal Law on the subject. In order to constitute bad faith, there should not only be an intentional Breach of Contract from a motive of interest, but a knowledge that the Breach would cause injury to another. Again the definition of "damages necessary to indemnify a Plaintiff against all loss" was so large, including possible profits, that, taken in connection with the definition just referred to, and bearing in mind that the alternative might be imprisonment for two years with hard labor, it might operate with extreme severity. The Chief Justice had formerly objected to the Bill being confined to Contracts on advances, and he (Mr. Erskine) entirely concurred in that view. Mr. Ritchie seemed to desire the retention of this limitation, on the ground, that a complainant should be able to claim the protection of this Act only when he had parted with some of his property, and put himself in a worse position, in reliance on the good faith of the opposite party. But he thought that a complainant might put himself in a worse position than before, in reliance on a contract, without giving advances—as for instance, if he chartered a vessel, or incurred other liabilities, on the strength of it. The one might be a matter only of a few Rupees, and the other of many thousands. This therefore, he thought, was not a judicious restriction. He would just call attention to the use of the word "wilfully" in Clause 2, and "wilfully" in Clause 3, as though it were tantamount to bad faith. He presumed that that was a misprint, and was not intended. [Mr. Ritchie assented.] He would only further notice Sections 5 and 6 of the Bill, and must

admit that he did not fully understand the principle on which they prescribed imprisonment with hard labor. It could not be as a penal infliction, because criminal legislation for such cases was repudiated. It could not be as a more stringent means of effecting the end for which imprisonment for debt was justified ; *i. e.*, getting at the debtor's property, because it was to be continued at the public expense even when there was no property. And it could not be as the best means of re-imbursing Government for the maintenance of the prisoners, because it was not industrial labor that was prescribed ; and the very essence of hard labor was that, in the first instance, it should be penal and exemplary, and only remunerative in as far as was consistent with that object. He nevertheless sincerely desired that this Bill should go to a Select Committee, and would only again express a hope that they might be enabled greatly to improve it.

The Hon'ble MR. COWIE said, that he did not understand that this Bill provided any Criminal punishment for a Breach of Contract, as the Secretary of State had disapproved of that principle But he believed that a Defendant, under this Bill, would suffer more than if he were prosecuted on the Criminal side, and the Complainant would certainly suffer more. So that he hoped that Mr. Ritchie, in Committee, would devise some more summary and less costly remedy. With reference to Mr. Harington's statement on the Civil Procedure, there was a general impression that suits occupied more time than he had stated.

The Hon'ble MR. FITZWILLIAM stated, that the European community generally, and many Natives engaged in trade, felt the necessity of some more stringent remedies for Breaches of Contract ; and he hoped that, notwithstanding what Mr. Harington had said, the Bill would be referred to a Select Committee, and that the suggestions of Mr. Erskine and Mr. Cowie would receive the consideration they deserved.

The Hon'ble MR. FORBES said, that the few observations which he wished to make, would have no reference to the Bill which was introduced into the late Legislative Council, and which was applicable only to Contracts for the delivery of agricultural produce. His observations would be confined to the present Bill, which included all Contracts for which consideration had been given, and which, he could not but think, would include more than those who advocated the Bill at all contemplated. In his opinion the Bill, if passed into law, would have an action in that part of India with which he had been most connected, which would be very novel, very injurious, and very little in accordance with the intentions of those by whom it was now supported. If he were not misinformed, a lease was a contract ; and when land was made over for cultivation to any party for a specified rent, it would, he imagined, form the consideration which would bring the lease or contract within the provisions of this Bill. Almost all land in the Southern part of India was held primarily

under lease from Government, either permanently or temporarily--permanently, inasmuch as the Government could dispossess no lessee as long as he paid the permanently fixed assessment on the land ; temporarily, inasmuch as any lessee could relinquish his lease at the commencement of any year from which he desired to be relieved from it. If he was correct in this assumption, it would follow, that all the hundreds of thousands of holders of leases from Government in Southern India would be amenable to the proposed law, if, from improvident expenditure on any private object, they became unable to meet the public demand upon their land; and he could not but think, that those who advocated this Bill should seriously consider the effect that its publication would be likely to have on the minds of the whole agricultural population of the Madras Presidency, when it informed them that, for the first time since the British Government was established, they were liable to imprisonment with hard labor, if by any improvidence they failed in ability to pay the assessment on their land. The point to which he desired to attract the attention of the Council appeared of more importance, when the Bill was a little further considered. It would be to no purpose that a sentence of hard labor would be passed against a contractor under this Bill, if there were to be no means of enforcing the sentence. The contractor would simply refuse to work, and the law would be defeated. But this point needed not to be argued, as the Council was well aware that the Sudder Court had ruled, that the Prison Discipline Law was as applicable to those confined on the Civil, as to those on the Criminal side of the Jail, and all that was necessary, therefore, was to consider what were the laws regarding Prison Discipline. Confining himself to the Presidency to which he had at first referred, he would notice that, by Regulation X of 1832 of the Madras Code, a person confined in Jail, who might refuse to perform any hard labor to which he had been sentenced, was liable to corporal punishment to the extent of 150 lashes, or three times the amount of punishment to which, by the Bill about to be introduced by the Hon'ble Mr. Beadon, those who committed grave and serious crimes were to be subjected ; and by the same law, even a careless or negligent performance of an allotted task, would render liable to 60 lashes, any person who evinced such carelessness or negligence ; this punishment even being more severe than was provided by Mr. Beadon's Bill for what were termed disgraceful crimes. Mr. Cowie had stated, when Mr. Beadon obtained leave to introduce his Bill, that he objected to all corporal punishment excepting in the case of juvenile offenders, and the Hon'ble gentleman had perhaps not sufficient acquaintance with the Criminal Law of the Mofussil, to be aware that the present Bill would bring all who were adjudged to have fraudulently broken their Contracts, within the scope of that punishment. It must be remembered, too, that the Prison Discipline Law made no exception. All classes and all races were alike subject to it, and the European, as well as the Native, would be liable to its provisions, if, when confined in Jail for a breach of contract, he did not break stones quite so zealously as an impatient Jailor might wish. It would probably be in His Lordship's recollection, that not very long ago the late Governor of Madras, Lord Harris, had issued a Commission of Enquiry into charges brought against the Native servants, of enforcing the Government

demand, and the Police Law, by harsh and illegal means, and he must confess his hope that, by the publication of the Bill in its present form, no ground would be given to the agricultural population of Southern India, to suppose that it was the intention of the Legislature to legalize measures, which every European Officer of Government had hitherto done his utmost to put an end to, as illegal and oppressive. If the Bill were to be published in its present form, he feared that it would have a very injurious effect, and he would urge Mr. Ritchie to consent, that the Select Committee to be appointed upon it should take into consideration the point he had now pressed, and should be instructed to make a preliminary report on the Bill, under the 17th of the Standing Rules, before it was published in the *Gazette*.

The Hon'ble the LIEUTENANT-GOVERNOR said, that the Council had been invited by Mr. Erskine to enter on the consideration of very large questions, embracing one whole Department of the Law, probably the largest of all, and to revise the Penal Code, which for 25 years had engaged the attention of some of the ablest men in India. He certainly did not think that there was substance and bone enough in this Bill, to make it a peg on which to hang such weighty questions. If a reconsideration of any of the topics suggested by Mr. Erskine were necessary, it would be better for some Hon'ble Member to address himself to the task and submit his views to the Council. He (Mr. Grant) would notice the only principle which he considered at present fairly came under discussion, and would enquire if this were not a Bill for the artificial encouragement of advances. In some degree he thought the Bill was open to that objection. He looked on the system of advances in this country as a great misfortune, and thought that it would be better, as far as possible, to check and reduce that system. The tendency of this Bill seemed to be on the other side, and therefore it was open to question. But he should vote for a Select Committee, reserving his right to vote hereafter as he might consider right. He wished, however, to enquire respecting the definition of damages, and to ask of Mr. Ritchie whether that definition would alter the substantive Law of damages as now administered in this country? They had heard of consequential damages, and he wished to know how far this Bill would carry the right to award such damages, beyond the practice of the Courts under the present substantive Law.

The Hon'ble MR. LAING said, that Mr. Harington had assumed that this and the Bill of last year were brought in to meet a special case, that of Indigo. This was not the case. The principle of both Bills, *viz.* that breaches of contract tainted with fraud should be criminally punished, was one applicable to all time, and of incalculable importance for the future welfare of India. He had been led to give that principle his warm support by two classes of considerations, material and moral. *Material.*—It appeared that, owing to the poverty of the Ryot, who had not sufficient capital wherewith to conduct his cultivation, a system of advances was almost universal in India for all descriptions of produce.

Those advances were commonly made at most usurious rates, and not only oppressed the peasant, but also unduly enhanced the price of produce. As an illustration, he had only the other day had occasion to compare the prices of Bengal and Malwa Opium, and he found that the former was produced at a cost of 400 Rupees a Chest, while the latter cost 750 Rupees, and yet the actual cultivator of the poppy received a much better remuneration in the former case, than in the latter. The difference was merely owing to the Government making advances in Bengal without interest, while in Malwa the Ryot was in the hands of middlemen, who made him the requisite advances. The same thing applied to all other produce. Take Cotton. What mighty interests were depending on the question, whether Indian Cotton could be produced permanently at a price to meet American. The transfer of a trade of £20,000,000 a year from America to India, and the extinction or perpetuation of slavery, were hanging on the question of a penny a pound more or less in the selling price of Indian Cotton at Bombay and Calcutta. The system of advances enhanced, far more than a penny, the cost price of almost every pound of Cotton produced in India. Why was the rate of interest on those advances so exorbitant? Mainly, no doubt, because capital was scarce, but to a considerable extent, also, because the security for the recovery of advances was imperfect. Bad security was only another word for high interest. England could borrow at three per cent., while America, with less debt in proportion to her resources, had to pay 6 or 8 per cent. But then "repudiation" was a word of American and not of English growth. So in private transactions; give the best possible security for the enforcement of *bonâ fide* obligations, and you would get the lowest possible rate of interest, consistent with the fair market relation between the supply and demand of capital. But give facilities for evading the payment of just debts, and the creditor must place on the honest Debtor an extra charge for insurance against the risks which he ran from the dishonest one. Nor was this all. Give security to Capitalists, and capital would flow in from other quarters and cheapen the rate of interest. There was a superabundance of capital in England, eager to seek profitable employment. Give it security in India, and it would flow here in a fertilizing stream. He did not expect that these results would follow at once, as if by magic, from passing this or any other Law, but he did believe that, if they legislated in a right direction, like men building for the future, a very considerable effect would be produced ere long, especially at a time when India was, we might hope, entering upon a new era of power and prosperity. He was convinced this law would not, as the Lieutenant-Governor partly apprehended, tend to hold out any artificial encouragement to the present system of advances, but that, on the contrary, it would prove the most efficient means of accelerating the arrival of a state of things, when advances might be discontinued altogether, and when the immense internal wealth of India might be brought into the market at a price regulated only by a fair wage for labor, a fair rent for land, and a fair interest and profit on capital employed. The second class of considerations which weighed with him was of a moral nature. They could not do a people

a greater injury than to make legislation so complicated and technical, that it held out facilities for evasion and chicanery, and did not correspond with the moral sense of the community. Legislation for all people, but more especially for an Oriental people, should be simple, summary, and in accordance with the dictates of common sense and natural equity. Now the existing English Law as to Contracts was founded on subtle distinctions, which he defied any plain mind to appreciate. If he made a Contract with a man and took an advance from him, intending at the time to break it, it was fraud, and he might be punished criminally. But if he changed his mind five minutes after he had signed the Contract, and, because he thought it more for his advantage, deliberately repudiated his obligation, it was no fraud, but merely the subject of a Civil suit. In fact the *repudiator* was in no worse position, as far as the law was concerned, than the honest but unfortunate Debtor. This was subversive of all feelings of moral justice. It reduced the law to a mere game of chess, to be played at by special pleaders, according to a set of technical rules. No people could stand the demoralizing effect of laws, which opposed the moral sense, and held out a premium to chicanery. Even in England, the demoralization produced among the class of petty traders by the over-lenient and technical Laws of Bankruptcy and Insolvency, had been so great, that it had been found indispensable to amend those laws, and to introduce the very principle for which they were now contending, namely, that fraud should be punished. The Indian people were not naturally more untruthful than others. On the contrary, truthfulness was always recognized as a remarkable portion of the Indian character, by the writers of antiquity. What a responsibility did they then incur, if, by introducing the complication and technicality of the worst parts of English Law, in a country where it was not understood, and where the administration of Justice was necessarily imperfect, they created and fostered a spirit of litigation and chicanery. Honesty was the best policy, and as far as it was possible to do so by their laws, they were bound to make it a man's interest to be honest, and to punish him if he was detected in fraud. For these reasons he heartily supported the motion.

The Hon'ble Sir Robert Napier stated that he agreed with the Lieutenant-Governor as to the evil of advances, and thought it would be better if the system could be abolished. But it would be long before they could expect that. In some Districts the people were so poor, that they could not leave their homes to go to places where employment was obtainable, without some advances to enable them. In his experience in public works, he had generally found that the rural population, to whom he had thus been compelled to make advances, were honest. But when competition occurred for labor, as in the neighbourhood of great cities, the temptation to break contracts was very great, and, there, a Law like that proposed was required. But the present Bill had a larger scope than the Bill of last year. He thought it would be better to confine it to small cases, but that was a matter of detail which might be considered in Committee. He approved of the principle of the Bill.

The Hon'ble Mr. Beadon said that it was very necessary to bear in mind the object of the Bill. Mr. Laing had truly said, that the Bill of last year had not been introduced in favor of any one particular class, but on the broad principle that, where there was a fraudulent breach of contract on which advances had been made, that fraud should be punished. It happened that the preparation of the Bill had fallen to him, and he thought it desirable to frame it on the model of Act XIII of 1859. But he must state, as he stated before, that he believed the best course of all would have been that suggested by Mr. Erskine, namely, an extension of one Section of the Penal Code relating to Criminal Breach of Trust. That course would have been unexceptionable, and would meet most of the cases under this Bill. Section 405 provided—

"Whoever, being in any manner entrusted with property or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property, in violation of any direction of Law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits Criminal Breach of Trust."

But, under that Law, it would be necessary to prove dishonest misappropriation of a particular advance, and there were cases in which that could not be proved. The advance itself might not have been misappropriated, and yet the contract might be subsequently broken in bad faith. That Section could be enlarged; and though he thought that the Penal Code should not be lightly altered, and that at any rate it was not now necessary wholly to revise it, yet it must be remembered that it was not perfect, and the Chief Justice, in his speech on the third reading, had said that it must be considered as open to constant revision. He did not therefore think that there was any objection to the extension of that Clause. But the Secretary of State had objected to the application of Criminal Law to Breaches of Contract, and therefore he was prepared to accept Mr. Ritchie's Bill as an alternative, and as the best provision possible under the circumstances. But he wished to notice one particular point. Its operation extended to all Contracts on which any consideration had passed. He doubted the wisdom of that provision. It was not essential to the original design, which was to punish that which amounted to Criminal misappropriation or breach of contract, when cash had been advanced. Mr. Harington's suggestion was, that the principle should be extended to all cases of damages. But this would launch the Council into a boundless and unknown sea. He would therefore prefer confining the Bill to cash advances. Mr. Harington and Mr. Forbes had dwelt on the dreadful consequences of imprisoning a large number of persons in Jail and subjecting them to the disgrace of penal imprisonment. But as the object was to prevent fraud, this very disgrace was desirable, as it might serve to check those who would disregard other consequences, and any man who would fraudulently break his contract, might be safely left to be dealt with like other convicts. As to the effect of the Bill on the system of advances, he agreed with Mr. Laing that it would tend to check it, and the argument of Mr. Harington respecting Act XIII of 1859 supported that conclusion. He had stated

that that Act had become practically inoperative, except that it had led the tradesmen to oppose the system of advances. He believed that such would be the necessary effect of the present Bill, and therefore should cordially support it. But he suggested that it should be confined to cases in which the consideration consisted of payments in cash.

The Hon'ble the RAJAH DEO NARAIN SINGH said, that there was no difference between the breach of a contract and the non-fulfilment of the conditions of a bond or mortgage, and therefore he could not see why imprisonment with hard labor should be awarded in one case, and not in the other. The Bill applied only to cases of breach of contract in bad faith and without reasonable excuse. But the honesty or dishonesty of a man's intentions were scarcely susceptible of proof, and the Bill did not define what was a reasonable excuse. One principal cause of breaches of contract, was that capitalists entered into contracts without ascertaining the ability of the other party to fulfil them. It was true that from breach of contract heavy losses ensued, but the Laws provided for the recovery of damages, and he saw no occasion for the addition of imprisonment with hard labor. In his part of the country, Sugar refiners, after entering into contracts with the cultivators for raw material equal to a certain given sample, often changed the sample with a view to lower the value of the produce supplied by the cultivator. The cultivator in such a case was forced either to break his contract, or to take whatever price the manufacturer might choose to put upon the articles supplied. The fault here clearly lay with the manufacturer. Yet in that, and in many other cases, imprisonment with hard labor would by this Bill fall on the contractor. Contracts were entered into in this country with builders and others, and advances were made, when it was well known at the time by the parties that the work could not be accomplished in the time specified. Yet in this case also the builders might be imprisoned. Capitalists already, by means of their money, had power over the poor and needy, and it did not seem expedient that the Law should step in and increase their power. He therefore thought that this Bill, far from being beneficial to the country, would give rise to constant disputes, and cause the ruin of many. He thought also that it would be injurious to trade, for, if a capitalist could cause a contractor to be imprisoned with hard labor, such persons would, as far as they had the power, abstain from entering into contracts. He also noticed that the Bill had no provision for the due attestation of contracts, so as to prevent their being tampered with by either party. Nor was the case provided for, of the payment of the consideration by instalments, or the case of a contractor, after fulfilling part of his contract, stopping short on account of the vexatious objections of the other party.

The Hon'ble SIR BARTLE FRERE said, that he supported the motion for referring the Bill to a Committee, not because he thought it perfect, but because the Bill was practically a complete and useful measure. He did not feel that the objections to it carried great weight. Mr. Harington stated that the Bill introduced new

principles. But this might be an advantage. Let the Council remember the state of our English Law some years ago. Though the law of a nation so advanced in civilization, there was extreme severity against indebtedness, so extreme that special legislation was unnecessary. In fact a man, unable to pay a debt, might be imprisoned for life, though innocent of fraud. The general sense of the community controlled the law, by refusing to put it in force, and subsequently the law itself was greatly relaxed. It had, however, been recently felt that the relaxation had been too great, and there had been a tendency to deal more severely with some cases. As to the new principle of supporting the private debtor at the expense of the State, it was impossible to say where the private injury ended and the public injury began. Mr. Harington objected to the limitation of the Bill to cases in which consideration had been paid. But he regarded this as a wise provision, for every person who wished to avoid coming under the law, might relieve himself by refusing to take consideration. It was not open to Mr. Harington, who opposed the principle of the Bill, to contend that the Bill did not go far enough. The law must be regarded as a general law, and though there might be practical difficulties in particular Districts, yet the strong call from various parts of the country for some legislation of the kind, showed the general want. Mr. Forbes feared that leases would be embraced. But it would be easy to provide that Revenue defaulters should be exempted. The amount of punishment in Jail, was a question of Prison Discipline. The Lieutenant-Governor had said, that he feared that the tendency would be to encourage advances. If he (Sir Bartle Frere) had any doubt on that point, he would vote against the Bill. His impression was that it would have the contrary effect. The evils of the present system arose largely from want of capital, want of security, and want of roads and communications, and to these had been added the inefficiency of our Civil Procedure. Mr. Harington had described the recent great improvements in that. But the cases to which this Bill would apply, would generally be petty cases, and the redress required in them must be rapid and summary. This Bill, by giving power to punish fraud when advances had been received, would do more than anything to prevent men insisting on advances. Their present reasons for doing so were partly custom, and partly the desire to have the employer in their power. He (Sir Bartle Frere) knew that, in some places near Calcutta, Capitalists, by acting with firmness, had succeeded in putting an end to the system, and had derived great benefit from the change.

His Highness the MAHARAJAH OF PUTTIALA said that, as he had only had the Bill for two or three days, he should prefer expressing his opinions on it on a future occasion. He had been recently directing his attention chiefly to the Stamp Bill.

The Hon'ble MR. RITCHIE said, that the supporters of this Bill were exposed to the remarks which were usually directed against those who took a middle course. It was open to some to contend that the Bill went too far, and to others that it introduced punitive remedies. Mr. Harington took both sides, but the

Bill was not open to the objection that it was at once too severe and too lenient. It was idle to discuss the question whether Criminal Courts should have the jurisdiction. The Secretary of State had decided that, and it remained for the Council to do what it could through the Civil Courts. It was objected that the Bill introduced a violent change. But the law, as it at present stood, made no distinction between the honest and dishonest debtor, while this Bill merely sought to provide a special remedy where there was fraud, by the award of full compensation, or imprisonment. What objection could there be to that? The tendency of modern legislation was in the same direction. Formerly, a Trustee could, with impunity, so far as the Criminal Law was concerned, commit any breach of trust, but the Law now rendered him liable to prosecution and punishment. So the Bankruptcy Act, while it afforded every facility to the honest debtor to relieve himself on the surrender of his whole property, dealt with the unfair trader as a criminal, and rendered him liable to 12 months' imprisonment, in cases where fraud tainted his transactions in contracting his debt, or where he had placed his property out of the reach of his creditor. In this Bill the attempt was made to prevent fraud by acting on the same principle. He agreed with Mr. Erskine that, as the standard of morality advanced, the number of offences of which the Law would take cognizance, would be more numerous. Formerly, when a man was charged with obtaining money under false pretences, the Courts would treat him simply as a cheat who had made a fool of the prosecutor. But now, obtaining money under false pretences was dealt with as a substantive offence. With reference to special legislation, it was not necessary to discuss that subject now, for this Act was not special but general. At the same time he must say that, if he had been in the Council last year, he should warmly have supported Mr. Beadon's Bill. An objection however had been felt to the jurisdiction of Criminal Courts, in cases where equities might have to be determined. But equities would not arise in the class of cases to which that Bill applied, or those that fell under Act XIII of 1859. In England the only cases of Breach of Contracts submitted to the Criminal Courts, were those which had the ingredient of simplicity, with which a Justice of the Peace might deal by mere common sense and every day experience. When cases of a more complicated character arose, there might be objection to the jurisdiction of the Criminal Courts. But the question was, what should be the remedy when an honest creditor was deprived of a benefit for which he had contracted, by a dishonest debtor? Mr. Erskine's argument was in favor of a penal remedy. But the line of enquiry he proposed was too wide. He (Mr. Ritchie) must decline entering on a preliminary enquiry. Materials enough were before them, to show that the dishonest debtor should not be treated as an honest debtor. The Bill provided that he should not be so dealt with in respect to the amount of damages. The Lieutenant-Governor enquired, if the definition in the Bill as to damages made any alteration in the substantive law on the subject. The present Bill certainly would alter the law as now administered in the English Courts. But he could not say that it would alter the law in the Mofussil Courts, and it was doubtful how far

it would alter it even in the English Courts, in cases in which the amount of damages was open. The innovation that would be made, however, would only amount to allowing a difference in the amount of damages in honest and dishonest Breaches of Contract. The law deemed it unreasonable to give a larger amount of damages, than it assumed the Defendant could reasonably have contemplated when he entered into the Contract. But that rule did not apply, in morality or common sense, to the case of a debtor who had dishonestly broken his Contract with the design to injure the Plaintiff. It had been considered that the law of damages was settled in a leading case a few years ago, in which a miller sued a public carrier for delay in delivering a wheel, in the absence of which he could not carry on his trade. It was held that he was not entitled to all the profits he had lost by the want of that wheel, for the public carrier could not have been aware that it was the only one he had, or could obtain. That might be a reasonable decision; but if a manufacturer, who contracted to make an article by a particular day, broke his Contract in bad faith and without reasonable excuse, the case might be different. He (Mr. Ritchie) had known cases in Calcutta, in which goods had been shut out of the last ship of the season, although the shipowner had contracted to take them; and the Plaintiffs had recovered only nominal damages. That might be fair when they were shut out accidentally. But if a shipowner, from motives of interest, excluded the goods he had contracted to carry, and took his own goods instead, the Plaintiff should be entitled to full damages and indemnification. Mr. Forbes' objection respecting the Government Ryots in Madras, had been met by Sir Bartle Frere. The question as to the mode of enforcing hard labor, was a question of Prison Discipline. He could not understand the authority of the rule respecting flogging, to which Mr. Forbes had referred. [Mr. Forbes said that it was a law.] Here, in the House of Correction, hard labor had been enforced on some desperate offenders without any flogging; and if the law were now about to be altered, it was only because such offenders sometimes might require severe measures. With respect to leases, he thought it right that the law should apply; but it should not extend to the refusal to pay Government Revenue, and in that respect the Bill should be amended. He would not enter at length into the details of the Bill, but he thought it right to adhere to its provisions respecting consideration, notwithstanding what had been urged by Mr. Beadon. On this point of consideration, opposite objections had been urged. The Bill however did not affect to deal with all Contracts, but only with those in which there was a certainty that the position of the Plaintiff had been changed for the worse, by his having given a consideration beyond a promise. Contracts resting on mutual promises did not afford the same ground of certainty. He regretted to differ from so high an authority as the Chief Justice on this point. The definition of "bad faith" might be improved; but the object of the Bill must be kept in view, as that object was stated in the Preamble, namely, "that it is just and expedient that Defendants in Civil suits, who have broken their Contracts in bad faith, without reasonable excuse, after receiving consideration for the same, shall be liable to stricter provisions in regard to the judgment and execution to be awarded against

them, than Defendants whose failure to perform their Contracts has not been in bad faith or without reasonable excuse." It was just, because the dishonest and tricky debtor should not be dealt with on the same footing as the honest and unfortunate one; and it was expedient, because it would tend to encourage honest commerce and to discourage fraud.

The Motion was put and agreed to.

EMIGRATION (SECHELLES).

The Hon'ble MR. FORBES introduced the Bill relating to Emigration to the British Colonial Dependency of Seychelles, and moved that it be referred to a Select Committee.

The Motion was put and agreed to.

KING OF OUDE BILL.

The Hon'ble MR. BEADON moved for leave to bring in a Bill to provide for the service of legal process issued against His Majesty the King of Oude, and for taking the examination of his said Majesty when required as a witness. He stated that the object of this Bill was to fulfil the promise and the expectation held out to the King of Oude after the annexation, that he should continue to be treated with all royal dignity. After the King refused to accept the Treaty tendered to him by Lord Dalhousie, he had placed himself at the disposal of the Government. But the Government were then prepared to pay him still the pension which they had offered, and to treat him with the same dignity as if he had accepted the Treaty. Afterwards, it became necessary to place him under arrest, and subsequently to that, on his release, he had applied to be placed in the position previously offered to him; and the Government were willing to fulfil their promise of 1856, withholding only independent jurisdiction in his own residence. The present Bill, therefore, would exempt him from the process of the Criminal Courts, except in the case of treason and murder. In ordinary cases Government might appoint a Commission to investigate the charge. As to Civil Courts, he would be placed on the same footing as the Nawab of the Carnatic had been. Process would be issued against him only with the previous sanction of Government, and he would be exempted from personal attendance as a witness in the Civil Courts.

The Motion was put and agreed to.

DISSOLUTION OF MARRIAGE (CHRISTIAN CONVERTS).

The Hon'ble MR. RITCHIE moved for leave to bring in a Bill to provide for the dissolution in certain cases of marriages entered into by Converts before their conversion. He said that the object of this Bill was to settle the Law respecting the Marriage of Converts from one religion to another. Doubts had been excited as to the continuing validity of such marriages, and as to the legitimacy of the issue. Considerable evil had thus resulted to individuals, and some reproach rested on the State for the continuance of such a state of things. There should at any rate be certainty with respect to the law. Unfortunately, there was considerable difference of opinion as to the state of the law

among those who had most considered the question. The question arose in the case of a person who left the faith which he professed when he was married, and was left by his wife on his conversion. There were two extreme opinions on the subject. One was, that the existing marriage tie continued, as before, binding on the unconverted wife, and that the law should enforce the conjugal rights of the husband. The other was, that on conversion the marriage tie was as absolutely dissolved, as if the converted party were dead, without leaving it to the other party to elect whether to continue in the married relation or not. In his (Mr. Ritchie's) opinion, both these opinions were incorrect. To hold that the marriage tie continued precisely as before, would be repugnant to the feelings and opposed to the usages of the people. In one case, under a decision of a learned Judge at Madras some years ago, the public had seen the infant wife of a Hindoo Convert, against her own remonstrances and the remonstrances of her family, handed over to her husband after his conversion, though both she and they considered that degradation was involved in it. This Bill would prevent the recurrence of such cases. The other opinion had more plausible support. Some Hindoo and Mahomedan lawyers considered that the marriage bond was dissolved. He (Mr. Ritchie) concurred in opinion with Sir James Colvile, when Advocate General, and with Sir Charles Jackson, that the marriage bond subsisted, but that no Court in India under the circumstances could enforce the conjugal rights, or had authority to dissolve a marriage simply upon the ground of conversion. But the marriage subsisting, the incidents of the marriage must follow the law under which it was contracted. But on conversion of one of the parties, that law could not be fully applied, and there was no *lex loci* that could be called in aid. The Hindoo or Mahomedan, previous to his conversion, might contract a second marriage while the first subsisted. But their laws would not give a dissolution of marriage for the purpose of enabling them to marry again, and did not distinguish between a separation *a mensâ et thoro* and a dissolution *a vinculo matrimonii*. In this state of things irregular marriages prevailed, and in some instances concubinage. Many marriages had been celebrated by conscientious persons, who believed that on the conversion of one party the former marriage had been dissolved. Where Sir James Colvile's opinion had become known, that practice seemed generally to have been given up. But the same forbearance was not shown in all places, and the time appeared to have come for a settlement of the question. The Bill would declare that, on the conversion of any husband from any of the religions of India, except the Christian religion, if the wife separated herself from her husband, the husband might apply to a Judge to enquire, in a manner consistent with the customs of the country, into her willingness to live with him, and the Judge should then record what took place. If she refused to live with him, then, if there were no children, after an interval of one year, or after an interval of two years if there were children, the Judge might declare the marriage dissolved. If the wife were an infant under 12 years, the examination would be postponed till she attained that age. The Bill would be confined to the case of a

husband's conversion, for very different considerations prevailed in the case of a wife. As the husband might, prior to his conversion, take a second wife, it could not be imputed to him that he had changed his faith for the purpose of marrying again. But that imputation and suspicion might rest on the wife, if she, by changing her faith, could procure a dissolution of her marriage.

The Motion was put and agreed to.

CONFINEMENT OF PRISONERS CONVICTED IN NATIVE STATES.

The Hon'ble MR. RITCHIE moved for leave to bring in a Bill to amend Act XVIII of 1843 (relating to the imprisonment in British Jails of persons convicted of certain offences in the Courts of Foreign States). He stated that the Act XVIII of 1843 authorized persons in charge of British Jails, to receive into custody persons convicted of Thuggee and Dacoity in Native States, and the object of this Bill was to extend that provision to Suttee and Burying alive, and a provision would be added authorizing the Governor-General in Council to extend this power to other offences.

The Motion was put and agreed to.

RULES FOR THE CONDUCT OF BUSINESS.

The Hon'ble MR. HARINGTON moved the introduction of the following Rule after No. 15 of the Rules for the conduct of business :—

"No Bill shall be introduced until seven days after a copy of the Bill and of the Statement of Objects and Reasons has been furnished to each Member."

He said that the only object which he had in view in moving the introduction of this Rule, was to ensure that a copy of every Bill proposed to be introduced into the Council, and of the Statement of Objects and Reasons, should be in the hands of Hon'ble Members a sufficient time to admit of their carefully and fully considering the same, before they were called upon to discuss the principle of the Bill and its detailed provisions. The Rules, as now framed, contained no provision on the point. An incident at to-day's Meeting of the Council, shewed the necessity of the Rule which he had proposed. They had been deprived of the benefit of the opinion of their Colleague His Highness the Maharajah of Puttiala, on a very important Bill debated to-day, in consequence of a copy of the Bill having reached him only the day before yesterday. In the Rule proposed by him, he had fixed the same time as prescribed by Rule 23 before the Report of a Select Committee on a Bill could be taken into consideration. He did not think that a less time should be allowed before the Council were required to discuss the principle of a Bill and its detailed provisions.

His Excellency the PRESIDENT said that he entirely concurred in the expediency of introducing the Rule proposed by MR. Harington, and thought that its omission was a mere oversight in drafting the Rules. Its adoption would prevent the repetition of the occurrence of to-day, whereby the Native Members had been deprived of the full opportunity of considering the Bill which had been discussed in Council.

The Hon'ble MR. RITCHIE said, he thought that three or four days would suffice, and that, if any Hon'ble Member required a longer time, he could apply to the mover of the Bill, who would be always ready to meet his convenience.

His Excellency the PRESIDENT said, that it would be better to have the Rule strict, and to relax it when necessary, than to render it lax, and then to prevent a Member from proceeding with a Bill unless the papers had been circulated for a longer period.

The Hon'ble MR. BEADON said, he thought that the Rules should be made as elastic as possible, and that there should be no obstruction or delay in proceeding with a Bill before the Council. In any special case, a Bill could be postponed; as on the present occasion, he had no doubt that, if the Maharajah had applied for a delay, the mover of this Bill would have willingly consented. He thought it might be desirable to follow the practice of the Legislative Council, and have a Standing Orders Committee, consisting of the President and two other Members, to whom all proposals of this kind could be referred.

MR. FORBES stated that four days' notice would practically be reduced to two, for the papers were circulated on the evening of the first day, and discussion took place on the morning of the fourth.

The Hon'ble SIR BARTLE FRERE was in favor of the proposition for seven days.

The Motion was put and agreed to.

The following Select Committees were named :—

On the Bill relating to Breaches of Contract committed in bad faith—the Hon'ble Messrs. Beadon, Ritchie, Harington, Erskine, and Cowie.

On the Bill for regulating the Bank of Bengal—the Hon'ble Messrs. Laing, Ritchie, Cowie, Fitzwilliam, and Rajah Deo Narain Singh.

On the Bill relating to Emigration to the British Colonial Dependency of Seychelles—the Hon'ble Messrs. Ritchie and Forbes.

The Council adjourned till Wednesday, the 19th Instant, at 11 A. M.

CALCUTTA;
The 12th February 1862.

M. WYLIE,
Deputy Secy. to Govt. of India, Home Dept.

Abstract of the Proceedings of the Council of the Governor-General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic. C. 67.

THE Council met at Government House, on Wednesday, the 19th February 1862.

PRESENT :

His Excellency the Viceroy and Governor-General of India, *presiding.*
His Honor the Lieutenant-Governor of Bengal.
His Highness the Maharajah of Puttiala, K. S. I.
The Hon'ble Sir H. B. E. Frere, K. C. B.
Major General the Hon'ble Sir R. Napier, K. C. B.
The Hon'ble S. Laing.
The Hon'ble W. Ritchie.
The Hon'ble H. B. Harington.
The Hon'ble H. Forbes.
The Hon'ble C. J. Erskine.
The Hon'ble W. S. Fitzwilliam.
The Hon'ble D. Cowie.
The Hon'ble Rajah Deo Narain Singh Bahadoor.
The Hon'ble Rajah Dinkar Rao Rugonauth Moontazim Bahadoor.

GOVERNMENT SEAL.

The Hon'ble MR. ERSKINE presented the Report of the Select Committee on the Bill to amend the law relating to the use of a Government Seal.

WHIPPING BILL.

His Excellency the PRESIDENT postponed the introduction of the Bill to authorize the punishment of whipping in certain cases, in consequence of the absence of the Mover.

PRESIDENCY BANKS CONSTITUTED GOVERNMENT TREASURIES.

The Hon'ble MR. RITCHIE introduced the Bill to provide for the payment, at the Banks of Bengal, Madras, and Bombay, respectively, of moneys payable at the General Treasuries of Calcutta, Madras, and Bombay, and moved that it be referred to a Select Committee. He said that, as the business of the Treasuries would be taken over from the 1st of March, he would propose that the Committee be instructed to report before that date.

The motion was put and agreed to.

CRIMINAL PROCEDURE CODE AMENDMENT.

The Hon'ble MR. RITCHIE moved for leave to bring in a Bill to amend the Code of Criminal Procedure. He stated that the object of this Bill was to enable the Government, when it extended the Code of Criminal Procedure to Non-Regulation Provinces, to accompany it by some special provisions. After the Code of Civil Procedure was passed, the Government was authorized (by Act IV of 1860), in extending it to a Non-Regulation Province, to declare any restrictions, limitations, or provisoes it might think necessary. It was not intended to give the same power in respect of the Criminal Procedure, which embodied very much of substantive Criminal Law. But it was necessary to authorize the Government to adapt the Code to the existing state of things in Non-Regulation Provinces, so far as the machinery for putting it in force was concerned. The alterations proposed would be of five descriptions; 1st, in regard to the Courts by which offences might be tried and sentences passed; 2ndly, with regard to preliminary enquiries by the Police, but the Government would be restricted from enlarging the powers given by the Code; 3rdly, with regard to the number of the Judges necessary to pass a sentence of death or penal servitude; 4thly, with respect to the power of revision by the several Criminal Courts over the Subordinate Courts; and 5thly, in regard to the confirmation of sentences of death by the Chief Commissioners.

The Motion was put and agreed to.

The following Select Committee was named:—On the Bill to provide for the payment, at the Banks of Bengal, Madras, and Bombay, respectively, of moneys payable at the General Treasuries of Calcutta, Madras, and Bombay—the Hon'ble Messrs. Laing, Ritchie, Fitzwilliam, and Cowie, and the Hon'ble Rajah Deo Narain Singh.

The Council adjourned till Wednesday, the 26th Instant, at 11 A. M.

M. WYLIE,
Deputy Secy. to Govt. of India, Home Dept.

CALCUTTA;
The 19th February 1862.

Abstract of the Proceedings of the Council of the Governor-General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., C. 67.

THE Council met at Government House, on Wednesday, the 26th February 1862.

PRESENT:

His Excellency the Viceroy and Governor-General of India, *presiding.*
His Honor the Lieutenant-Governor of Bengal.
His Highness the Maharajah of Puttiala, K. S. I.
The Hon'ble Sir H. B. E. Frere, K. C. B.
The Hon'ble Cecil Beadon.
Major General the Hon'ble Sir R. Napier, K. C. B.
The Hon'ble S. Laing.
The Hon'ble W. Ritchie.
The Hon'ble H. B. Harington.
The Hon'ble H. Forbes.
The Hon'ble C. J. Erskine.
The Hon'ble W. S. Fitzwilliam.
The Hon'ble D. Cowie.
The Hon'ble Rajah Deo Narain Singh Bahadoor.
The Hon'ble Rajah Dinkar Rao Rugonauth Moontazim Bahadoor.

GOVERNMENT SEAL.

The Hon'ble MR. ERSKINE moved that the Report of the Select Committee on the Bill to amend the Law relating to the use of a Government Seal be taken into consideration, and that the Bill, as proposed to be amended by the Select Committee, be passed.

The motion was put and agreed to.

BANK OF BENGAL.

The Hon'ble MR. RITCHIE presented the Report of the Select Committee on the Bill for regulating the Bank of Bengal, and moved that the Rules for the conduct of business be suspended, that the Report be taken into consideration, and that the Bill, as proposed to be amended by the Select Committee, be passed. He stated that the amendments in the Bill had already partly been published in the *Gazette*, and the additional amendments were not of a very important character. The new arrangement with the Bank would take effect on the 1st of March, and for that reason he was desirous that the Rules should be suspended, and the Bill be passed at once.

His Excellency the PRESIDENT declared the Rules to be suspended, and the Motion for the passing of the Bill with the amendments of the Committee was put and agreed to.

PRESIDENCY BANKS CONSTITUTED GOVERNMENT TREASURIES.

The Hon'ble MR. RITCHIE presented the Report of the Select Committee on the Bill to provide for the payment, at the Banks of Bengal, Madras, and Bombay, respectively, of moneys payable at the General Treasuries of Calcutta, Madras, and Bombay, and moved that the Rules for the conduct of business be suspended, that the Report be taken into consideration, and that the Bill, as proposed to be amended by the Select Committee, be passed. He stated that the object of the amendments in this Bill had simply been to make it clear that the Act should have operation only so long as the Agreement to which it referred remained in force. The same necessity existed in this case as in the other for the suspension of the Rules.

His Excellency the PRESIDENT declared the Rules suspended, and the Motion for the passing of the Bill with the amendments of the Committee was put and agreed to.

STAMP DUTIES.

The Hon'ble MR. HARINGTON presented the Report of the Select Committee on the Bill to consolidate and amend the law relating to Stamp Duties, and moved that the Bill, as proposed to be amended by the Select Committee, be published in the Official *Gazettes* of the several Presidencies and taken into consideration that day six weeks. He stated that, since the Bill had been published, very considerable alterations had been made, and the Select Committee had proposed some further very important changes. It was desirable, therefore, that before the Bill as it now stood was considered by the Council, the public at large, and particularly the commercial classes who would be principally affected by the provisions of the Bill, should have an opportunity of learning their nature and offering their observations on them. If the Bill were re-published for six weeks, there would be still time for it to be brought into operation before the 1st of May.

The Motion was put and agreed to.

WHIPPING BILL.

The Hon'ble MR. BEADON introduced the Bill to authorize the punishment of whipping in certain cases, and moved that it be referred to a Select Committee.

The Hon'ble MR. HARINGTON said that the active part he had taken in the preparation of the Bill of last year sufficiently proved that he was not opposed to the principle of the present Bill, and that he could not object to its being referred to a Select Committee. Mr. Cowie had on a former occasion stated that, except in the case of juvenile offenders, he was opposed altogether to corporal punishment. But Mr. Cowie's dislike of it probably did not exceed his own. He (Mr. Harington) assented to the Bill, not because he liked corporal punishment, but because, in the present state of civilization, among three-fourths of the population, and in the present defective state of prison discipline, he was satisfied that corporal punishment was still a necessity in this country. As regarded a great majority of the criminal population, it was a more humane punishment, had more power as a deterrent, and was not more demoralizing than imprisonment. In this opinion

he was confirmed by some of the oldest and most experienced Officers, among whom he might mention the present Governor of Bombay, the present Lieutenant-Governor of the North-Western Provinces, and the Bombay Sudder Court; and he thought that, when Mr. Cowie read the correspondence which had taken place on the subject of last year's Bill, he would modify his opinion, and come to the conclusion that at present this punishment could not be altogether done away with, contrary to the opinion of the Local Authorities. If the case had to be considered solely from the European point of view, he should not be disposed to give his assent to the Bill. At the same time, it should be borne in mind that all classes of persons in the Presidency Towns were subject to corporal punishment for certain offences, and that that punishment was provided by the Articles of War for the European and Native Soldiers. Mr. Harington then adverted to some objections to the form of the Bill, and to the details wherein it differed from the Bill of last year, and noticed particularly the change in the title from flogging to whipping, and the change in the instrument of punishment. But he expressed his willingness to agree to whatever instrument was shown to be least likely to cause permanent injury, or an injury greater than was intended by the Legislature.

The Hon'ble RAJAH DINKAR RAO said that he did not think that corporal punishment ought to be inflicted for all offences. He would confine the punishment to cases of theft committed after a first conviction of the same offence, and even in such cases would inflict the punishment only on the Court being satisfied that the offender looked to theft and imprisonment in jail as a means of support. In such cases he would administer the punishment at the expiration of the imprisonment.

The Hon'ble MR. ERSKINE said that, unwilling as he was to see this punishment inflicted, yet being persuaded that it could not yet be dispensed with throughout all India, he felt himself bound to support the introduction of the Bill.

The Hon'ble MR. COWIE stated that his aversion to corporal punishment, except in the case of juvenile offenders, was based on the belief that it was the duty of the State, in dealing with its criminals, to endeavour to combine reformation with punishment, and on the persuasion that an adult criminal could not be reformed by beating him. It was said that some natures were insensible to every other form of punishment. But this would involve the theory that, if you found a man a brute, you must treat him as one, and this was contrary to all modern systems of dealing with crime. He had carefully studied the Bill, and found his objections strengthened by its details. Several of the gravest offences, such as perjury, forgery, dacoity, and rape, which were severely dealt with by the Penal Code, might, under certain circumstances, expose their perpetrators to a whipping, in addition to the punishment provided by that Code. To such criminals he thought a certain amount of solitary imprisonment with restricted diet should be awarded, together with the hardest labor which their health could sustain, and he

thought that a Medical Officer would be better employed in carrying out that system than in inspecting a whipping. He considered that the Penal Code, as it stood, should have a fair trial before any attempt was made to add to or improve it. With respect to the title of the Act, he thought that the word "whipping" was adopted from English Acts which treated of the punishment of juvenile offenders. But he did not see what punishment the term "flogging" properly designated, if it were not such a punishment as was provided by this Bill.

The Hon'ble MR. FITZWILLIAM stated, that he partly agreed with the supporters of this Bill, inasmuch as he could not object to the punishment of whipping for minor offences, such as assaults, petty larceny, and the like, if the punishment were guarded as was contemplated by the 7th, 8th, and 9th Sections of this Bill. But he objected strongly to the substitution of whipping for the punishments provided for such offences as were enumerated by Mr. Cowie. There were seventeen such offences specified in the Bill, crimes of great magnitude, for which the Penal Code provided very heavy punishments. The Penal Code, he considered, had well provided for those offences, and he was opposed to the introduction of this Bill, which contemplated the addition or the substitution of other punishments.

The Hon'ble Mr. FORBES said, that he had formerly supported the principle of this Bill, and he saw no reason now to change his opinion. But he had some objections to the details of the Bill, which he should reserve for the consideration of the Select Committee. With reference to Mr. Fitzwilliam's objection, it must be remembered that the Penal Code only affixed a maximum of punishment except in two cases. The Court was at liberty, in cases not of an aggravated nature, to adjudge a very short period of imprisonment, and this Bill would enable it to substitute whipping for that.

His Honor the LIEUTENANT-GOVERNOR said, that he was opposed to the principle of this Bill, because he was opposed to flogging as a general punishment. The question, however, was a very large one, and he would not enter into a discussion of it. The Law Commission had expressed their opinion against it, and in that opinion he concurred. It had been said that flogging, for petty offences, would save men from demoralization in jail. But this Bill provided for the infliction of flogging besides imprisonment in jail, and that, he thought, cut away all ground for its support. He could understand why a man should be flogged and let go. But here he might be imprisoned, it might be, for four years and eleven months, besides being flogged. He regarded the measure as a retrograde one, and therefore was compelled to oppose it.

The Hon'ble MR. RITCHIE stated that the supporters of the Bill greatly regretted the necessity for this Bill, but they entirely believed that the circumstances of the case fully justified the measure. If they might consult their own feelings, corporal punishment would find no place in their Courts. The opponents of the measure, no doubt, were supported by very high authority, and by none higher than that of the late Lord Macaulay. But he could not but

believe that Lord Macaulay had acted more on English prepossessions than on Indian experience, in declaring at once and altogether against the punishment. He believed, and most Officers of experience, including some of the most humane men in the country, had said, that imprisonment to some classes carried so little dread, that whipping was absolutely necessary as a more sharp, summary, and effectual punishment. Without it the jails would be overcrowded by prisoners for long terms of imprisonment, fostering habits of idleness and dependence. The main objections to the punishment were, that it was cruel and degrading. But as to the cruelty, the Legislature must control that; and as to the degradation, while he admitted that, among the population of cities, degradation might be felt, there were large classes of the population elsewhere, by whom it was not felt, and on whom at the same time the punishment operated as a deterrent, while it saved them from the contamination of a jail. In some cases, when awarded with imprisonment, the objection of the Lieutenant-Governor seemed to apply. But he thought that, with the classes he had mentioned, the punishment could be amply justified, if it saved them even from a part of the imprisonment which they must otherwise undergo. Objections had been taken to the title of the Bill. He thought the title immaterial. But the word "whipping" had been used in all the English Acts since the time of Henry VIII, and was not confined to the punishment of juvenile offenders. Mr. Fitzwilliam, he thought, had been answered by Mr. Forbes. The Penal Code provided the maximum of punishment, except in one or two cases, and it was in the discretion of the Court to reduce the punishment even as low as a single day's imprisonment; so that flogging might be awarded not in lieu of a lengthened imprisonment, but in lieu of a very short one.

The Hon'ble Mr. Laing said, that he saw no objection to the principle of the Bill, and when he found practical men stating, as the result of their experience, that the punishment was necessary, he could not allow abstract rules, which were applied to other countries and other people, to induce him to abolish the punishment here. In England the re-action against flogging had been caused by the extent to which it had been carried in the Army and Navy. The degradation which it involved, was felt when self-respect was outraged. But in a country like Egypt, for instance, where men made it a point of honor not to pay taxes, unless they could show marks that payment had been extorted, no such degradation was felt. Even in the highest public schools in England, some of the most distinguished men whom the country had produced, had suffered corporal punishment, yet they were not degraded by it, because disgrace was not attached to it in those schools. But in schools where such punishment was not usual, its infliction might entail disgrace. They must therefore discard abstract theories, and regard the lessons of experience. The jails could not provide the means for the supervision and reformation of all the Criminal population, and it would often be more cruel to shut a man up in jail, associate him with bad companions, turn him out with a bad character, and leave his family destitute while he was imprisoned, than to punish him at once by a flogging.

The Hon'ble Sir ROBERT NAPIER said, that he could speak on this subject from practical experience, having had charge of 2,000 prisoners; and he believed it was admitted that they were kindly treated. But he was convinced that, in the case of most of them, it would have been better if they had been flogged and discharged. Among the poorer classes in the country, there were some who found a better dwelling and better food in jail, and who were willing to endure restraint rather than labor. Such persons would often court imprisonment in jail. He did not approve of the provision that flogging should be an additional punishment, but on the whole he felt bound to support the Bill.

The Hon'ble RAJAH DEO NARAIN SINGH said, that the punishment of flogging was abolished by the Regulation II of 1834, and was subsequently re-introduced, as a punishment for larceny only, under Act III of 1844. The Statement of Objects and Reasons of this Bill did not show why it was abolished, and then re-introduced. If crime was increased since flogging was abolished, let the punishment be restored. But if it were introduced on the supposition that additional punishments would deter men from crime, he might refer, in proof to the contrary, to the condition of Native States, and especially Nepaul, where, although adultery and theft were punished with instant death, and slight crimes were visited with severe corporal punishment, crime remained unchecked, and those very offences were still committed. He did not, therefore, think it advisable that flogging should be added to imprisonment.

The Hon'ble Sir BARTLE FRERE said, that the Council had to consider the principle of this punishment and the principle contained in the Bill. Flogging was not a better punishment than some others; fine for instance. But they had to do with cases where no fine could be imposed, and some kind of corporal suffering must be inflicted. Moral treatment would be perferable where it was practicable. But where it was not, they were compelled to have resort to some species of bodily suffering. This was the answer to Mr. Cowie's objection. They acted under the necessity of the case. As to moral treatment, great progress had been made; and no one was better entitled than the Lieutenant-Governor to speak on this subject, as he had been connected with prison reform almost from the time of his first coming to this country. All men had learned by experience not to go too fast in that matter. The general results of the experiments hitherto made had been good, but there had been some frightful mistakes. He alluded particularly to the system of solitary confinement as once attempted in America. It had proved utterly inefficacious; and in some cases had caused the total loss of reason. One instance of the kind was enough to make them pause. The Government was bent on improvement, but the problem which had not been found easy in England, was beset with peculiar difficulties here. The prisons built in England at the time when the first Report on Prison Discipline was published here, had in some instances cost from £500 to £1,000 for each prisoner. The error had been corrected in later prisons, but recourse had been had to some degree of corporal suffering, and he believed that, in this country also, it would be found necessary for

some years to inflict it. As to the details, he agreed generally with the Lieutenant-Governor and the Rajah Dinkar Rao, and would draw a distinction between offences. In the conviction for the first offence of perjury or forgery, the Court might ultimately find that it was mistaken. In respect of theft and robbery, the punishment should be in substitution of imprisonment. There were many classes, for whom this was the mildest punishment and the most humane.

His Highness the MAHARAJAH OF PUTTIALA stated that he agreed in the views of Mr. Beadon on this subject.

The Hon'ble MR. BEADON said, that he would not enter at present into the details of the Bill. Nothing but absolute necessity would lead the Government to resort to a measure of this kind. That such a necessity existed, might be concluded *a priori* from the condition of a large portion of the population ; and from the returns they had received from public Officers. Mr. Cowie had observed that the reformation of prisoners should be attended to in conjunction with their punishment. Undoubtedly this was desirable, but at the present time the primary object must be the prevention of crime, carrying on reformation contemporaneously as far as possible. When imprisonment was resorted to, every effort must be made to render it reformatory. But this Bill would obviate the necessity of imprisonment in many cases. Objection had been taken to the title of the Bill. Mr. Ritchie had truly said that that was immaterial. But the title did distinguish the present Bill from the Bill of last year. Flogging with a rattan was likely to create more permanent injury than the punishment contemplated by this Bill. He could not concur with Mr. Ritchie respecting the opinion of Lord Macaulay, for he gathered from the Report of the Law Commissioners, that they considered the punishment of flogging advisable in some cases, and abstained from recommending it, because the Government had so recently abolished the punishment by the Regulation II of 1834. He did not gather from that Report, that Lord Macaulay was opposed to the punishment under all circumstances.

The Hon'ble MR. RITCHIE stated, in explanation, that he had not referred to the Report of the Law Commissioners, but to the note of Lord Macaulay to the Penal Code published in 1837.

The Motion was put and agreed to.

RELIGIOUS ENDOWMENTS.

The Hon'ble MR. BEADON introduced the Bill to enable the Government to divest itself of the management of religious endowments, and moved that it be referred to a Select Committee.

The Hon'ble RAJAH DEO NARAIN SINGH said that, as the proceeds of land, set apart in times past for the maintenance of Mahomedan and Hindoo religious edifices, had been misapplied and misappropriated to other uses, the Government, under Regulation XIX of 1810 of the Bengal Code, and No. VII of 1817 of the Madras Code, took the management of these funds into its own hands, and had since most honestly and efficiently administered them, thus showing a strong contrast to the Hindoos and Mahomedans, who before

the dominion of the British destroyed each other's temples whenever they were sufficiently powerful. Government, on the contrary, had administered these funds, without evincing the slightest religious prejudice; both sects therefore owed Government a deep debt of gratitude. No member of either sect had complained of Government's administering these estates, and there seemed to be no grounds for Government's divesting itself of their management. The position of Government, with reference thereto, was analogous to that of the Trustee of a Minor or incapable person. As however Government had determined on taking this step, let the management be transferred to the Courts, so that the responsibility might still rest with the Government. In this Bill the rules for the appointment and the duties of Committees of Management and Trustees were clearly laid down, but he would suggest that it should be provided that, when any "interested individual" or "member of the Committee" should accuse the Manager or Trustee of malversation or misfeasance, his plaint should be written on unstamped paper, and that the Officer, in whose Court the petition was filed, should dispose of the case summarily, and at once put a stop to the malpractices of the defendant. If the complainant were put to any expense, people would, rather than subject themselves thereto, wink at the malpractices of the Managers, for, besides the price of the stamp, should the plaintiff fail to prove his charges, he would also have to pay defendant's costs, and few were inclined to go to any expense for a religious purpose. If, for the above reasons, people should connive at the Malpractices of the managers, the latter would be emboldened to commit still greater enormities, until the legitimate expenditure would be curtailed, and eventually the temples would be ruined. It was however possible that, if every kind of check were removed, people might bring charges against Managers for the sole purpose of annoying them; this might be obviated by empowering the Collector to institute a summary enquiry with a view (if the charges seemed to him well founded) of sending the case for trial to the Civil Court, and if on the contrary the charges appeared to him merely trumped up to annoy the defendant, of finally disposing of the case.

The Hon'ble SIR BARTLE FRERE agreed in the principle of this Bill, but suggested that it might be sufficient to repeal the Regulations, and leave the regulations respecting the future administration of the Trusts to the Local Legislatures of Madras and Bengal, providing for the North-Western Provinces in this Council. He understood that this course had been recommended by Mr. Forbes.

The Hon'ble MR. FORBES said that he had intended to make this proposition, but that he understood that it was considered that this subject affected the religion or religious rites and usages of certain classes of Her Majesty's subjects in India, and therefore could not be taken up in the Local Councils without the sanction of the Governor-General.

His Excellency the PRESIDENT said, that it was his opinion that the subject of this Bill brought it within the provision of the 19th Section of the Councils' Act, but if there were a desire to deal with the subject in the Local

Legislatures, the sanction of the Governor-General would not, without grave cause, be withheld.

The Hon'ble Mr. Beadon said, that he understood the Rajah Deo Narain Singh not to object to the principle of the Bill. The details could hereafter be considered. But he did not see any sufficient reason why applications to the Courts under the proposed Act should be on unstamped paper, or heard in any special way prior to the institution of a suit. This would be opposed to the principle of the Bill, as it would be perpetuating the connection of Government with these endowments. He believed that it was not competent to the Local Legislatures to take up this Bill without the sanction of the Governor-General, and it was on that account that he had introduced the Bill in this Council. But he had noticed a newspaper report, that a similar Bill had been introduced into the Madras Council.

The Hon'ble Sir Bartle Frere said that he had only contemplated the Local Legislatures dealing with the details of the administration of the Trusts.

The Hon'ble Mr. Forbes, in explanation, said that a Native Member of the Madras Council had moved for certain papers with a view to introducing a Bill, but the Government had declined to furnish them, as they saw that the subject had been taken up in this Council.

The Hon'ble Mr. Ritchie said, that he understood that the restriction in the 19th Section of the Councils' Act extended as much to the introduction, without the sanction of the Governor-General, of any Bill respecting the religious rites and usages of the people, into this Council, as into any Local Council.

The Hon'ble Mr. Beadon stated that he had omitted, in moving for leave to bring in the Bill, to mention, as he might have done, that he did so with the sanction of the Governor-General. Probably that was inferred from his being a Member of the Executive Government. He doubted, however, if this Bill fell within the prohibition of the Act.

His Excellency the President said, that the Bill would apply to many cases in which the rites and usages of the people were not concerned. But, on the other hand, there might be other cases in which they were concerned, and therefore it would be the more prudent course to treat this as a Bill to which the Act applied.

The Motion was put and agreed to.

AFFIDAVITS, AFFIRMATIONS, &c.

The Hon'ble Mr. Ritchie introduced the Bill to amend the law relating to affidavits, affirmations, and solemn declarations, and moved that it be referred to a Select Committee with instructions to report in two months.

The Motion was put and agreed to.

HUMEERPOOR BILL.

The Hon'ble Mr. Ritchie introduced the Bill to remove the District of Humeerpoor in the North-Western Provinces from the operation of the General Regulations, and moved that it be referred to a Select Committee with instructions to report in two months. He said that he had ascertained that Mr. Harington had doubts as to the necessity of this measure, and if in the Select

Committee it was found that so strong a measure was not required, there could be no objection to remodelling the Bill to the necessity of the case. On this understanding, Mr. Harington would not oppose the Bill. The object, as stated, was to bring the administration of justice at Humeerpoor, into uniformity with its administration in the rest of the Division of Jhansi, of which it formed a part. Mr. Harington thought that a more advantageous change might be made, and his suggestion would be communicated to the Lieutenant-Governor of the North-Western Provinces.

The Hon'ble MR. HARINGTON said that, on the understanding mentioned by Mr. Ritchie, he would not offer any opposition to the introduction of this Bill or to its reference to a Select Committee. The understanding upon which Mr. Ritchie was willing to introduce the Bill, had relieved him from a great difficulty, and rendered it unnecessary for him to trouble the Council at this stage of the Bill with any lengthened observations upon the principle of the Bill. On reading the extract from the letter of the North-Western Government, annexed to the Statement of Objects and Reasons, it at once occurred to him that the anomalous state of things therein referred to as arising out of a divided jurisdiction, and the correction of which was stated to be the chief, if not the only object contemplated in the introduction of the present Bill, might be at once and easily removed by a transfer of jurisdiction from the Bundelkund to the Jhansi Authorities, without having recourse to the extreme measure of excluding from the operation of the general Regulations, as proposed by the present Bill, a District which had been subject to those Regulations almost from the time that the Province of Bundelkund, of which Humeerpoor formed a part, was ceded to the British Government by the Peshwa, that is, for a period of nearly sixty years. There was an immense difference between bringing a Territory on its first acquisition by the British Government, under what was called the Non-Regulation system, and continuing it for a time under that system, and, to use a word which had become a term of art, de-regulationizing an old Regulation District, and leaving it to be governed by law, of which this Council had little, if any knowledge. He believed that there was considerable difference of opinion as to what was meant by de-regulationizing a District, and as to what was the effect produced by that process upon a District to which it was applied. Some imagined that, in the de-regulationized District, all Acts and Regulations of Government were done away with, and that what he might call home-made laws took their place. Others considered that the District was simply excluded from the operation of the Regulations, and that the Acts of Government, previously in force in the District, continued in force therein. It was not necessary now to enquire which of these views was correct. He had considered it right to say so much on that occasion upon the principle of the Bill. He gave no opinion at present upon another question raised in the extract of the letter from the North-Western Government, to which he had already referred, namely, as to the desirableness or otherwise of a separate judicial establishment.

The Motion was put and agreed to.

COURTS OF REQUESTS (STRAITS SETTLEMENT)

The Hon'ble Mr. Forbes introduced the Bill to enlarge the jurisdiction of the Courts of Requests in the Settlement of Prince of Wales' Island, Singapore, and Malacca, and moved that it be referred to a Select Committee.

The motion was put and agreed to.

EXECUTION OF MOFUSSIL PROCESS (STRAITS.)

The Hon'ble Mr. Forbes introduced the Bill to extend Act XXIII of 1840 (for executing within the local limits of the jurisdiction of H. M.'s Courts legal process issued by authorities in the Mufussil), and moved that it be referred to a Select Committee.

The Motion was put and agreed to.

LICENSE TAX REPEAL.

The Hon'ble Mr. Laing moved for leave to bring in a Bill to repeal Act XVIII of 1861 (for imposing a duty on Arts, Trades, and Dealings), and moved that the Rules for the conduct of business be suspended, and that the Bill be introduced and passed. He spoke as follows :—

In proposing a Bill for the remission of taxation, before the period of the regular Budget, I am taking a course which is only to be justified by special circumstances. The reason is this. The License Tax—a Tax affecting four or five millions of the humbler classes of artizans, mechanics, and petty traders, has now reached a point where it is just possible to stop it, but where the delay, even of a few weeks, would see it in full operation.

To postpone decision, therefore, would have been practically to decide against the tax-payer, and it became the duty of the Government, at the first moment when they acquired the moral certainty that the Tax was no longer indispensable, to come to a decision whether or not to allow it to be enforced.

His Excellency the Governor-General will, I have no doubt, state to the Council the general and political reasons which have led the Government to the conclusion that the License Tax should be repealed, and immediate action taken ; and I shall confine myself to stating the grounds on which as a Financier I have felt justified in recommending the measure now before the Council.

In arriving at its decision the Government have been influenced by no misgivings as to the soundness of the principle on which the License Tax is based, or as to the perfect facility of collecting it without opposition.

In principle nothing can be more just than that the class of tradesmen and artizans in towns and villages, who have so greatly benefited by our rule, and whose condition, I am happy to think, is daily improving with the prosperity of the country, should contribute in some just proportion towards the support of the State.

In practice also it has been the uniform rule of Native Governments, both Hindoo and Mahometan, to enforce direct Taxes of this description on the trading classes. Without going back to the records of the early Hindoo history, or even to the Institutes of Akbar, it may suffice to say that, when the British rule was recently extended to the Punjab and Sinde, a long list of Taxes on every

conceivable art, trade, and profession was found in existence, at rates far heavier than those of the proposed License Tax. Nor are such Taxes confined to India. They are general throughout the East, and familiarly known in almost every country of Europe, so that the exemption of British India is almost a solitary instance of Financial forbearance on the part of a Government.

So generally was this known, that not a whisper of opposition to the Tax has reached the Government, and there cannot be the least doubt that, if the Law passed last summer be allowed to take its course, 50 or 60 Lakhs will be paid into the Treasury in the course of the next six months without disturbance or any overt manifestation of discontent.

Under these circumstances, the Government believe that a License Tax is now, and will be at any time hereafter, a perfectly legitimate work of raising revenue whenever additional revenue is indispensably required.

At the same time it is equally clear that, without indispensable necessity, it is not desirable to impose new Taxes at all, and least of all a new Tax which affects a great many persons and produces very little money.

With three classes as proposed, at 1, 2, and 3 Rupees respectively, the average License Tax paid by each individual would probably not exceed 1¼ Rupee, so that the Tax-gatherer must call at 4 or 5 millions of doors to collect £500,000 or 600,000 of revenue.

I need not say that such a mode of raising revenue is not desirable, if it can be avoided, especially in a country where we have to work with very imperfect instruments, and where every Rupee taken from the Tax-payer may cost him another Rupee in time and trouble, or worse still, in many cases may be made an instrument of oppression and extortion. The classification of 4 or 5 millions of persons, even into three simple classes, is a serious operation, which of necessity involves much labor on our already over-worked officials, and much trouble and annoyance, with occasional unavoidable injustice, to the persons affected by it.

Accordingly, it is quite clear that such a Tax ought not to be imposed at all, unless it is likely to be permanently needed and retained as part of our regular Financial system.

As long as a doubt existed on this point, the Government refrained from acting. To restore a clear and *bonâ fide* equilibrium in the Finances of India, is an object of such paramount importance that all other considerations must give way But without anticipating the more full and accurate statement which will accompany the Budget in April, enough is already ascertained to satisfy us that the License Tax is no longer required for the purpose of restoring an equilibrium.

The state of the cash balances affords an unerring test of our real position, as there have been for the past year no Loans open, and no accumulation of arrears or liabilities. All that has to be allowed for is the return to England of the £1,000,000, which was sent here in bullion last spring, under apprehension of the possible

results of the famine, and of about £2,000,000 more, which will be due to England on the balance of accounts of the year.

Of the total expenditure of the Empire about £9,000,000 in round numbers, is paid in Engand for Home charges, stores, interest on debt, guaranteeed Railway interest, &c., of which we pay here for England about £7,000,000 in constructing Railways and on other accounts, so that a balance of about £2,000,000 is due by India to England to square the accounts of the year and establish an equilibrium.

Setting aside this £2,000,000 and the £1,000,000 remitted in bullion, as belonging to England, our Indian cash balance on the 1st of the present February was £15,400,000, having been £12,680,000 on the corresponding day of 1861, and £14,280,000 at the commencement of the current Financial year on the 1st May 1861.

The inference is irresistible that during this period our receipts have more than equalled our expenditure.

The detailed returns which are now coming in under the new and more accurate system of account and audit, fully confirm the general result indicated by the cash balances, more especially as regards the buoyancy of the principal branches of revenue, which appear to have been habitually and largely underestimated under the old system, and there is no reason whatever to make us doubt the continuance of this buoyancy in the ensuing year.

I should be sorry, however, to say positively that we have a surplus beyond what is required for giving up the Income Tax; still less to specify its amount, or base on it any further proposals for remission of taxation, for it is just possible that between now and April something might occur to diminish the cash balances, or otherwise affect our calculations.

It is well known that the Government do not regard the enhanced rate of Customs Duties on imports of manufactured and semi-manufactured goods as a proper part of our permanent Financial system, but as a temporary expedient to meet an emergency, and therefore it will be our wish to reduce those Duties, if on a full review of our position at the end of the Financial year we see that we can do so with safety.

But in the meantime it can be no objection to refraining from imposing a new Tax like the License Tax, which we do not want, that we are not quite in a position to say positively whether we shall be able to remit another existing tax which is in full operation. In matters of taxation change is of itself a great evil, and the occasions are rare indeed when it is good policy to impose a new tax for the sake of getting rid of an existing one. There is one change which is always salutary, viz., to be able to reduce taxation by the exercise of a wise economy and by the buoyancy of existing revenue arising out of general prosperity, but beyond this, to avoid changes as much as possible, should be the policy of every prudent Financier.

It is by these means that we are now enabled to arrest taxation at the very threshold of five millions of doors. Since the estimates of the year 1860-61 were framed, or in the course of two years, the revenue of India will shew an increase on those estimates of upwards of £3,000,000, while the expenditure will have been diminished by a still larger amount. I cannot but hope therefore that the result now proposed to the Council will be accepted as an encouragement to proceed in the same course, as an earnest of further progress in the same direction, and above all as a practical proof of the sincerity of our professions when we say that we have no wish to impose unnecessary burdens on the people of India.

In the present instance we give up 50 or 60 lakhs, which are, I may say, as good as in our treasuries, for no conceivable motive, except that of tenderness for a large body of tax-payers. Indeed a small portion of the tax has been already collected, and this we shall return to the agreeable surprize, I have no doubt, of those who, when they paid their Rupees, little expected ever to see them back again.

If there be, as I have often heard, an impression on the minds of some classes of the native population that there is no end to the new taxes, and that it is our policy to extract from them all we can, it is by *facts*, not by *professions*, that such an impression can alone be removed.

The fact that the English public recently subscribed a large sum for the relief of the sufferers from famine in the North-West Provinces, must have done more than a ship-load of tracts and proclamations to convince all intelligent and fair minded natives of the reality of English sympathy with India.

In like manner the *fact* of the Government giving up 60 lakhs of revenue to avoid putting on a new Tax, which no one approves, and which every one has made up his mind to accept as an accomplished fact, cannot, I think, fail to satisfy every candid mind that we do not impose taxes recklessly or maintain them without necessity.

I have only to add that, personally, it is a source of gratification to me, as I am sure it will be to all the Members of the Council, that the improved state of our Finances should have been ascertained just in time to enable His Excellency the Viceroy to adopt, consistently with perfect prudence, as one of the last acts of his Administration, a measure so entirely in accordance with its whole spirit and policy.

His Excellency the PRESIDENT said that the Council must have heard with satisfaction the statement of his Honorable Colleague, Mr. Laing, showing, as it did, so promising an aspect of the revenue, and that the proposed remission of taxation could be made with perfect prudence. He wished to offer a few observations respecting the selection of this particular Tax for remission, and the mode

in which the determination of Government had been made public. It always happened that, when a Government was in a position to remit taxation, there were as many claimants for the benefit as there were remonstrants against new taxes when further taxation was required. On this occasion the Government, feeling itself able to remit taxation, had carefully considered whether the remission should be made from direct or indirect taxes,—from those which affected internal industry, or those which bore upon foreign commerce. Now this License Tax had peculiar claims, for, by remitting it, the Government was able, not only to relieve a large class from new payments, and that class one not so well able to bear taxation as others, but also to cut short those tedious processes of classification and assessment which the Tax required, and which involved much that was scarcely less harassing to the people than the taking of money from them. That was a strong reason. But he must repeat that which was stated by Mr. Laing, that in no quarter had there been any indication of soreness or irritation at the imposition of this Tax. Before deciding on its remission, the precaution had been taken of communicating by telegraph with the Local Governments, to ascertain if there were any difficulty in its remission. Had any discontent (not to speak of resistance) been apparent, it might have been a question if it would be a wise or dignified course at that moment to withdraw the Tax. But no answer which had been received indicated that any Local Government had experienced any difficulty in the imposition or collection of the Tax. It was only fair to the people of India to make this statement. With respect to the mode which the Government had adopted of notifying the remission of this Tax, no one felt more strongly than himself, the obligation and desirableness of departing as little as possible from the Rules of the Council, or the inexpediency of the Executive Government taking the initiative in a measure which might properly come from this Council. He should have been glad if the remission of this Tax, which the Legislative Council had imposed, had first been heard of at that table. But the case was one for immediate action. For although in Bengal no progress had been made in the collection of the Tax, the collection was going on in two divisions of the North-Western Provinces, and also in Oude, in the Punjaub, and in the Madras and Bombay Presidencies. The classification, moreover, was in full progress everywhere; and as the object was not only to remit taxation, but also to avoid troubling the people vexatiously, immediate action was necessary. The decision of Government was taken; the Resolution of the 21st Instant was adopted and published; and information was at once conveyed to the Local Governments. This having been done, the Government had taken the earliest opportunity of coming to this Council with the Bill which His Hon'ble Colleague proposed to introduce.

His Excellency the PRESIDENT then declared the Rules for the conduct of business to be suspended, and the Bill was introduced, read by the Secretary, and passed.

The following Select Committees were named:—

On the Bill to authorize the punishment of whipping in certain cases—the

Hon'ble Messrs. Beadon, Ritchie, Harington, and Cowie, and Rajah Deo-Narain Singh.

On the Bill to enable the Government to divest itself of the management of religious endowments—the Hon'ble Messrs. Beadon, Ritchie, Harington, and Forbes, and Rajah Dinkar Rao Rugonath.

On the Bill to amend the law relating to affidavits, affirmations, and solemn declarations—the Hon'ble Messrs. Ritchie, Harington, Forbes, and Erskine.

On the Bill to remove the district of Humeerpore in the North-Western Provinces from the operation of the general Regulations—the Hon'ble Sir Bartle Frere, and Messrs. Ritchie, Harington, and Erskine.

On the Bill to enlarge the jurisdiction of the Courts of Requests in the Settlement of Prince of Wales' Island, Singapore, and Malacca—the Hon'ble Messrs. Ritchie, Harington, and Forbes.

On the Bill to extend Act XXIII of 1840 (for executing within the local limits of the jurisdiction of Her Majesty's Courts, legal process issued by authorities in the Mofussil)—the Hon'ble Messrs. Ritchie, Harington, Forbes, and Erskine.

The Council adjourned till Wednesday, the 5th of March, at 11 A. M.

M. WYLIE,

Deputy Secretary to the Government of India,

Home Department.

CALCUTTA ;
The 26th February 1862.

Abstract of the Proceedings of the Council of the Governor-General of India assembled for the purpose of making Laws and Regulations under the Provisions of the Act of Parliament 24 and 25 Vic. C. 67.

THE Council met at Government House, on Wednesday, the 5th March 1862.

PRESENT :

His Excellency the Viceroy and Governor-General of India, *presiding.*
His Honor the Lieutenant-Governor of Bengal.
His Highness the Maharajah of Puttiala, K. S. I.
The Hon'ble Sir H. B. E. Frere, K. C. B.
The Hon'ble Cecil Beadon.
The Hon'ble S. Laing.
The Hon'ble W. Ritchie.
The Hon'ble H. B. Harington.
The Hon'ble H. Forbes.
The Hon'ble C. J. Erskine.
The Hon'ble W. S. Fitzwilliam.
The Hon'ble D. Cowie.
The Hon'ble Rajah Deo Narain Singh Bahadoor.
The Hon'ble Rajah Dinkar Rao Rugonauth Moontazim Bahadoor.

EMIGRATION (FRENCH COLONIES.)

The Hon'ble MR. RITCHIE presented the Report of the Select Committee on the Bill to amend Act XLVI of 1860 (to authorize and regulate the emigration of Native Laborers to the French Colonies.)

KING OF OUDE BILL.

The Hon'ble MR. BEADON introduced the Bill to provide for the service of legal process issued against His Majesty the King of Oude, and for taking the examination of His said Majesty when required as a witness, and moved that it be referred to a Select Committee, with instructions to report in a fortnight.

The Motion was put and agreed to.

PROTECTION AGAINST BAD COIN.

The Hon'ble MR. RITCHIE introduced the Bill for the better protection of the public against bad Coin, and moved that it be referred to a Select Committee.

The Hon'ble RAJAH DINKAR RAO said that, he did not think that this Bill should be passed, because it was improper not to restore the metal after the Coin had been reduced to the metallic state. The Bill provided that, if it were suspected that a man was knowingly in possession of counterfeit Coin, his case might be sent to a Magistrate. But it was difficult to determine whether the Coin was kept with a guilty knowledge, and he thought that the existing law for restoring debased Coin after it was reduced to metal, was sufficient. The

Penal Code already provided for offences respecting the Coin, and he thought it undesirable to legislate further on the subject, when that Code had only been in operation for two months.

The Hon'ble RAJAH DEO NARAIN SINGH said that, he thought the Bill unobjectionable, except in respect of an ambiguity in the wording of Section II. That Section left it open to doubt whether the unlawful possession of silver and gold filings, &c., was to be considered proved, and to entail their forfeiture, when such filings, &c., were found alone, or only when they were found together with the instruments used in obtaining them, or instruments for making counterfeit Coin. He would suggest that such forfeiture should only occur, and the possessors of such filings should only be liable to conviction, when they were found together with such instruments.

The Hon'ble MR. RITCHIE said that the objections of the Rajah Dinkar Rao did not touch the principle of the Bill. It was undesirable that the law here should deal more tenderly with the offence contemplated than the English law did. The principle was that every person should be entitled to receive back metal, of which counterfeit Coin consisted, if he could give a satisfactory explanation of the mode in which such Coin came into his possession. The Rajah was mistaken in supposing that the law at present authorized the breaking up of bad Coin. There was considerable doubt upon the subject, and the object of the Bill was to reduce the law on the subject to a certainty. The suggestion of the Rajah Deo Narain Singh was entitled to much consideration, and might properly be submitted to the Select Committee.

The Motion was put and agreed to.

PENAL CODE AMENDMENT.

The Hon'ble MR. RITCHIE introduced the Bill to amend Chapter XII of the Indian Penal Code, and to provide for certain offences against the Coin, and moved that it be referred to a Select Committeee.

The Hon'ble MR. HARINGTON said that, he was compelled on this occasion, as he had been on the introduction of Mr. Beadon's Bill to provide for the punishment of whipping, to object to the form of the Bill. The present Bill he considered even more objectionable inasmuch as it mixed up substantive Criminal Law, with Criminal Procedure, and provided new laws for the Straits' Settlement. At the least he considered that, there should be two Bills, one to amend the Penal Code, and the other to amend the Code of Criminal Procedure. Great advantages had been conferred on the public during the administration of the present Governor-General by the passing of many Acts complete in themselves, which swept away a number of previous Regulations in which various provisions were combined in an indiscriminate mass. The good thus effected should not be undone, and the Council should be careful not to drift back to the confused legislation of former days. Turning from the form to the substance of the Bill, he enquired if the Penal Code, which had been for twenty-five

years under the consideration of so many able jurists, had omitted by accident the provision contained in the second Clause of Section I of this Bill? He must reject that supposition, and conclude that the subject had been considered, and that it had been decided to omit the provision. Turning to the original Code, he found that his conjecture was correct. In their Note to the Chapter relating to Coin, he found the following observations by the Law Commissioners:—

"We considered whether it would be advisable to make it an offence in a person to have in his possession at one time a certain number of counterfeit Coins, without being able to explain satisfactorily how he came by them. It did not, after much discussion, appear to us advisable to recommend this or any similar provision. We entertain strong objections to the practice of making circumstances which are in truth only evidence of an offence, part of a definition of an offence; nor do we see any reason for departing in this case from our general rule.

"Whether a person who is possessed of bad money, knows the money to be bad, and whether knowing it to be bad, he intends to put it into circulation, are questions to be decided by the tribunals according to the circumstances of the case, circumstances of which the mere number of the pieces is only one, and may be one of the least important. A few bad Rupees which should evidently be fresh from the stamp, would be stronger evidence than a greater number of bad Rupees, which appeared to have been in circulation for years. A few bad Rupees, all obviously coined with the same die, would be stronger evidence than a greater number obviously coined with different dies. A few bad Rupees placed by themselves, and unmixed with good ones, would be far stronger evidence than a much larger number which might be detected in a large mass of treasure."

These remarks applied especially to the offence in Clause 2 of Section I, but they also bore on the offence in Clause 1. He would not contend that the Penal Code was perfect. But looking to the time it had occupied, the care bestowed on it, the ability of the men engaged on it, and the short time, not amounting to three months, in which it had been in operation, he thought it was premature to add to it provisions which had been deliberately omitted by the framers. The Penal Code, as it stood, contained several provisions with respect to the possession of counterfeit Coin, and he believed that those provisions were sufficient to protect the public. The additions proposed by Mr. Beadon's Bill stood on a different footing. They were embodied in the Penal Code as amended by the Select Committee, and were taken out of it to be embodied in a separate Bill, and separately considered, in order to prevent delay in the passing of the Code.

The Hon'ble RAJAH DINKAR RAO said, that he objected to this Bill, because he thought that the new offences enumerated in it would be difficult to be brought home to the offender, and the law therefore would be the cause of oppression to the people. The subject of this Bill had already been treated in the Penal Code, and that Code had only been two months in operation.

The Hon'ble MR. ERSKINE stated that he recognized the weight of many of the remarks made by Mr. Harington, and his attention also had been arrested by the Note of the Law Commissioners in the Penal Code. Mr. Harington's objection extended to both Clauses of the 1st Section. But he did think that in the Penal Code there was a deficiency. Its provisions only extended to materials with which an offence was hereafter to be committed, but there was no provision in

respect of materials with which an offence had already been committed. The case was analogous to that of the possession of stolen property. A case might arise in which a person made a trade of receiving filings from Coin ; but it was doubtful if this was a matter of sufficient importance to warrant an amendment of the Penal Code. He could not at all assent to the second Clause of Section I, and entirely concurred with the Note in the Penal Code on the subject. It might not be an offence to receive the Coin or to retain it, and it was admitted that it might be right to give the possessor the material of which the Coin he had incautiously received consisted. Many Coins might be received in the course of a single forenoon over the counter by a large tradesman who could not prove that he had exercised caution in examining them. The provisions of the Bill respecting Procedure were very questionable. It would be well for the Council to consider how far it should legislate at all on Procedure which could be provided for by the Local Legislatures. The Penal Code stood on a different footing. That Code could not be amended without the sanction of the Governor-General. But the Procedure Code might be modified by the Local Legislatures to meet the requirements of other Presidencies ; and already two Bills and been introduced into the Bombay Legislature which did affect Procedure. Section IV of this Bill provided that the offences specified in the Bill should be tried under the provisions of the Code of Criminal Procedure. But a Local Legislature might desire to modify that Code, but would be prevented from doing so by its inability to amend this Act of the Council of the Governor-General. He thought that, if they passed a Bill thus settling the Procedure, it should be restricted to those Territories in which there were no Local Legislatures.

The Hon'ble Rajah Deo Narain said that, he was unable to see any special cause for the proposed amendments of the Penal Code. Amendments should only be made when a law had been proved defective in practice. Sufficient time had not yet elapsed to test the Penal Code. The proposed new Section 254*a* would entail great suffering on the public, as persons innocently in possession of Coin which had been diminished in weight, would be liable to punishment. A man cutting a goldmohur in halves, using one-half for an ornament, and keeping the other, would be liable to be prosecuted though his intentions were innocent. Section 254*b* would render the possessor of five or more Coins which had been diminished in weight, liable to punishment. But it appeared to him that it would be very difficult to prove whether Coin had become lighter by fair or by foul means, for Coin was constantly changing hands, and was necessarily becoming worn. Or a servant or enemy might maliciously place five false or light Coins in a larger sum in order to get the owner convicted of an offence. In his opinion it was sufficient to provide that false or light Coin should be cut or broken, as ample punishments had been provided by the Penal Code.

The Hon'ble Sir Bartle Frere said that, with respect to the first offence provided under Section I, he thought that it stood on the same footing as the

receipt of stolen goods, and therefore it might be necessary to provide for it if no adequate provision yet existed. As to the second offence, he concurred with Mr. Erskine. It appeared to him that it might be well, instead of providing for the possession of counterfeit Coin without lawful excuse, which it would be the duty of the possessor to offer, to provide for the possession of such Coin under circumstances that raised the suspicion that it had not been received *bonâ fide*, or that it was intended to make unlawful use of it. He also agreed with the Rajahs Dinkar Rao and Deo Narain, that it was undesirable to alter the Penal Code prematurely. But he could not go so far as Mr. Harington. He should be glad to see a case made out of practical inconvenience, such as existed in the former case that had been before the Council.

The Hon'ble Mr. Ritchie admitted the force of the objection to amendments of the Penal Code at the present time. But it did not appear to be sufficient to prevent the Council acting in a case like that before it. Mr. Harington argued as if the whole subject of offences relating to the Coin had been considered by the Law Commissioners, and exhausted in Chapter XII of the Penal Code. If that were the case, no further action should be taken until some practical inconvenience arose. But he believed that such was not the case, and that the law in the Penal Code differed from that previously administered and from the law in England, and that those who had principally to watch offences relating to the Coin found it to be insufficient. There was a law for the local jurisdictions of the Supreme Court making the possession of counterfeit Coin an offence that might be summarily punished. That offence was punishable with fine and forfeiture of the Coin, and it had enabled Magistrates to deal with such cases as the seizure of large numbers, amounting to 2,000 and 2,500 counterfeit goldmohurs and of counterfeit Rupees, under circumstances which did not admit of any offence being brought home in the ordinary manner to any particular individual. If the law were to enable an offender in such cases to defeat a prosecution simply by holding his peace and putting his accuser to the proof, there would be no remedy at all. When the punishment was simply a fine, there was nothing revolting to the feelings in calling on the accused for an explanation, if such a foundation of suspicion existed as his possession of more than a certain number of counterfeit Coins. He regretted to differ on such a question from the framers of the Penal Code, but it had recently been reconsidered at home, and provisions similar to those of this Bill had been embodied in the Act of last year. The framers of the Penal Code probably considered the subject merely generally, and not as it would be considered specially by those who had much to do with the public Coin, or had frequent opportunities of discovering the circulation of counterfeit Coin. With respect to the form of the Bill, he proposed, in Select Committee, to consider generally the best mode of making amendments in the Penal Code and the Code of Criminal Procedure. He admitted that it was undesirable to mix up Procedure and Substantive Law, but in some cases it was difficult to

sever them; and the mode of proceeding resolved itself into a question of convenience. He had already divided the new law of Coinage into two Bills, but if further separation were necessary, the present Bill must be divided into three, namely, for the Criminal Law, the Criminal Procedure, and the law for the Straits' Settlements, but it was very desirable to avoid the unnecessary multiplication of Acts.

The Motion was put and agreed to.

SUBORDINATE MEDICAL OFFICERS', WIDOWS,' AND ORPHANS' FUND.

The Hon'ble MR. RITCHIE moved for leave to bring in a Bill to provide for the dissolution of the Subordinate Medical Officers', Widows,' and Orphans' Fund, and the distribution of the Funds belonging thereto. He stated that, the Society which it was intended to dissolve had been established by the Subordinate Medical Officers of Government in 1851, at Ferozepore, the object being to provide for their Widows and Orphans, and the pensions were to be payable out of the interest on the capital. But during the mutiny all subscriptions stopped, and the affairs of the Society fell into so much confusion, that it was now necessary to afford relief by winding up the affairs through the medium of the Supreme Court, in the manner adopted in 1856 in the case of the Bengal Mariners' and General Widows' Fund.

The Motion was put and agreed to.

RULES FOR THE CONDUCT OF BUSINESS.

The Hon'ble MR. BEADON moved that a Select Committee be appointed to consider all proposals that might be made to alter or amend the Rules for the conduct of business, and that the Committee consist of the President, Mr. Ritchie, and Mr. Harington. He stated that there was such a Committee in the late Legislative Council by whom all proposals for the amendment of the Standing Orders were considered prior to their introduction to the Council.

The Motion was put and agreed to.

The Hon'ble MR. RITCHIE presented a Petition from Monsieur Gustave Pietsch, Manager of the Comptoir d'escompte of Paris, which had established a Branch in Calcutta, and moved that it be referred to a Select Committee.

His Honor the LIEUTENANT-GOVERNOR suggested that no business could be transacted at a Meeting of Council, except in the passing of Rules, or the making of Laws and Regulations, and that this Petition did not appear to fall under either head.

His Excellency the PRESIDENT concurred with His Honor, and the Motion was withdrawn.

The following Select Committees were named:—

On the Bill to provide for the service of legal process issued against His Majesty the King of Oude, and for taking the examination of His said Majesty—the Hon'ble Messrs. Beadon, Ritchie, Forbes, and Erskine.

On the Bill for the better protection of the public against bad Coin—the Hon'ble Messrs. Ritchie, Harington, Erskine, Fitzwilliam, and Cowie.

On the Bill to amend Chapter XII of the Indian Penal Code and to provide for certain offences against the Coin—the Hon'ble Messrs. Ritchie, Harington, Erskine, Fitzwilliam, and Cowie.

The Council adjourned till Wednesday, the 12th Instant, at 11 A. M.

M. WYLIE,

Depy. Secy. to the Govt. of India,

Home Department.

CALCUTTA,
The 5th March, 1862.

Abstract of the Proceedings of the Council of the Governor-General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 *and* 25 *Vic. C.* 67.

THE Council met at Government House, on Wednesday, the 12th March 1862.

PRESENT :

His Excellency the Viceroy and Governor-General of India, *presiding.*
His Honor the Lieutenant-Governor of Bengal.
His Highness the Maharajah of Puttiala, K. S. I.
The Hon'ble Sir H. B. E. Frere, K. C. B.
The Hon'ble Cecil Beadon.
Major-General the Hon'ble Sir R. Napier, K. C. B.
The Hon'ble S. Laing.
The Hon'ble W. Ritchie.
The Hon'ble H. B. Harington.
The Hon'ble H. Forbes.
The Hon'ble C. J. Erskine.
The Hon'ble W. S. Fitzwilliam.
The Hon'ble D. Cowie.
The Hon'ble Rajah Deo Narain Singh Bahadoor.
The Hon'ble Rajah Dinkar Rao Rugonauth Moontazim Bahadoor.

EMIGRATION (FRENCH COLONIES).

The Hon'ble MR. RITCHIE moved that the Report of the Select Committee on the Bill to amend Act XLVI of 1860 (to authorize and regulate the Emigration of Native Laborers to the French Colonies) be adopted, and that the Bill be passed.

The Motion was put and agreed to.

ADMINISTRATION OF JUSTICE AT ADEN.

The Hon'ble MR. RITCHIE postponed the introduction of the Bill to provide for the administration of Civil and Criminal Justice at Aden.

CRIMINAL LAW REPEAL.

The Hon'ble MR. HARINGTON introduced the Bill to repeal certain Regulations and Acts relating to Criminal Law and Procedure, and moved that it be referred to a Select Committee, with instructions to report in one month. He stated that the Bill had already been six months before the public, and its further delay for the usual period therefore would not be necessary.

The Hon'ble MR. RITCHIE said that he felt that a great debt of gratitude was due to Mr. Harington for the great labor he had bestowed on this Bill. It was

sufficient to look at the Schedule of the Bill to observe at once how large and important a task had been accomplished.

The Motion was put and agreed to.

SUCCESSION TO ESTATES (OUDE).

His Excellency the PRESIDENT moved for leave to bring in a Bill entitled a Bill to provide for the succession to and the rights in respect of certain talookas and granted Estates in Oude, and for the jurisdiction of the Courts of that Province in suits relating to land. He stated that, in moving for leave to introduce this Bill, it was necessary to explain the objects which the Government had in view. The Council would bear in mind some circumstances connected with the restoration of British Supremacy in Oude. In 1858 and 1859, after the Province had been recovered from rebellion and the authority of the Queen had been vindicated, many Grants were made of lands which had previously been confiscated to Government. In some cases those Grants were made to proprietors who had forfeited their rights, but to whom the favor of Government was extended, and who were permitted to re-enter upon their Estates ; in other cases, to proprietors who had remained in possession of their own Estates and received additions thereto in consideration of their services ; and in numerous instances, to persons who had had no previous connection with the soil of Oude, but who were brought into the Province there to receive the rewards which they had earned. The terms on which those Grants were made were recorded, and a Summary Settlement was effected. The terms declared that each grantee had received a permanent, hereditary, and transferable right in his Estate. The Governor-General, who was then exercising all the powers of the Governor-General in Council, sanctioned those conditions which the present Bill would now re-affirm. After the Grants had been made, and by a subsequent order of the Governor-General, the principle of succession by the rule of primogeniture, in respect both of the talookas which had been restored and of Estates newly granted, was introduced. The principle was affirmed but was not accompanied by any details. But as being an act of the Government of India done previously to the passing of the Indian Councils' Act of 1861, he believed that there could be no doubt of its having the full force of law. The present Bill therefore would only declare the principle more formally, and provide in detail for the manner in which the rule of primogeniture should take effect. It would provide that, in case of intestacy, the Estate or talooka should go to the natural-born heir, that is, to the eldest son ; that failing such heir, it should go to an heir by adoption ; and failing an adopted heir, to the nearest collateral male heir : in default of all of these, it would provide that the estate should go to the widow for her life, and at her death, to such son as she might adopt according to the custom of her family : and lastly, if all these should fail, that the Estate should pass to such persons as would inherit if this Act were not made law. The object in view was to combine the principle of primogeniture with other principles and usages traditional in this country and dear to the people. In the Province of Oude the operation of the Hindoo and Mahomedan Laws was peculiarly confused and conflicting—so much so that it might have been a question whether on that account alone some legislative interposition and

correction were not expedient. And probably, it would not be contended that, such being the case, the introduction of a law of primogeniture, with the generally warm approval of the talookdars (the parties most concerned), was an unwise divergence from the laws which the English Government had found established there.

The Bill gave power to the Government to declare from time to time what Estates should be considered as talookas or granted Estates under the operation of the Act, and it provided that none of these Estates, after enrolment on a list as such, should be liable to seizure or sale in satisfaction of decrees of Court, except under sanction of the local Government confirmed by the Governor-General in Council. The placing of an Estate on the list would be subjected to certain checks and precautions which would prevent this being done without the knowledge or to the detriment of any who might have claims upon, or interest in, the Estate. The removal of an Estate from the list would also take place under precautions, and only with the consent of the local Government and of the Governor-General in Council.

The Bill would also provide for the descent in the same line as the landed Estate of such personal property as might fitly be recognized as heir-looms, upon application to that effect by the possessor. This provision would be gratifying to those legislated for, and would entail no inconvenience; but it formed no essential part of the Bill. The Bill further provided that disputed claims to succession or right of inheritance to the Estates subject to the Bill should be determined by the local Government, subject to the confirmation of the Governor-General in Council; thus giving the Government the charge of watching over these inheritances, and rendering their protection a matter of Governmental policy rather than of law. This as regards the Estates on the talooka list: but the Bill went farther and dealt with suits of whatever description relating to the title to lands in Oude. In regard to these it restored the state of things subsisting in Oude prior to the introduction of Act VIII of 1859. Before that time all such suits were adjudicated by the Revenue Authorities, subject to appeal to the Chief Commissioner as Financial Commissioner. Act VIII had been understood to alter the procedure and to place such questions under the cognizance of the Civil Courts. There had been however doubts as to the operation of that Act in this respect, and it was therefore desirable that the law should be clearly defined. He deemed it far preferable that in a country in the condition of Oude, where our laws and system of legal procedure were not familiar to the people, where the Settlement was still a summary and temporary one, and where the Government had yet to feel its way to a wise, encouraging, and beneficial Settlement, questions relating to land should, as far as possible, continue to be dealt with as revenue questions and not be brought within the scope of our Courts and Law. These were all the particulars of the Bill which it was necessary to mention. He laid it on the table in the hope that it would preserve to the people of Oude that without which no people could long prosper politically or socially,—an Aristocracy connected with the land.

The Motion was put and agreed to.

WASTE LANDS

His Excellency the PRESIDENT moved for leave to bring in a Bill entitled a Bill to provide for the sale of Waste Lands and for the redemption of the Land Revenue. He said that the Bill which he had now to propose was not inferior in importance to that which he had already submitted to the Council. The scope of it would need little explanation to the Council, all of whom were familiar with the Resolution of Government of the 17th October 1861, relative to the sale of Waste Land and the redemption of the Land Revenue The Bill was in fact an embodiment of that Resolution. It had been in the contemplation of Government, as might be gathered from the last paragraph of the Resolution, that the first legislative action on this great subject should be taken by the local Governments; and it must not be understood that the present Bill was introduced from any apprehension of a want of promptness or earnestness in the proceedings of those Governments. Quite the contrary. It had appeared to the Governor-General in Council upon further consideration, that it was desirable in itself and that it would probably be convenient to the local Governments that a measure of such wide and Imperial application should start into law from the Governor-General in Council. Even when this Act was passed, if the local Governments desired to make modifications or additions in the application of the principles of the Resolution to their own Presidencies, the Act would create no difficulty in their way—though it might in some cases be necessary to revoke or suspend particular Clauses of it with reference to particular parts of the country, in order that the true spirit of the Resolution might be carried out under the special circumstances of particular Districts. The measure was designed to help the local Governments, and to afford facilities and encouragements in carrying out the common object. One particular matter required notice. The Resolution of Government contemplated the security of the public creditor by the investment of the purchase-money of Waste Lands and money paid for the redemption of the Land Revenue. This Bill would charge the Currency Commissioners with that duty. No distinction was made in the Bill, any more than in the Resolution, between the two sources of Revenue; and it was his decided opinion that no such distinction ought to be made; though this was a point upon which some difference of view existed.

It was true that, hitherto, in India and in the Colonies, the proceeds of sales of Waste Lands had been carried to the Current Account of Income. Of the Colonies it was unnecessary to speak; but in India there was a special reason against this. For although at present Waste Lands in India yielded no Revenue, and although in selling them it could not be said that we parted with daily income, yet having regard to the Indian system of deriving Revenue directly from land, we most assuredly did part with dormant Revenue: and as our Civil administration extended over lands that now lay waste and needed no administration, new charges would come upon the Government. It might be confidently expected that the increasing prosperity of the country would enable us to meet such charges; but we should still be in the position of having sold, for an immediate price, a certain future income from

those lands, and therefore we ought to treat that price as Capital. For this reason, and also to guard against the possible objection of those who thought that they saw improvidence in the measure, and therefore did not regard it with favor, the Bill would provide for the investment, as Capital, of the whole proceeds, whether from redemption of the Land Revenue, or from sale of Waste Lands. He need not describe in detail the manner in which the Resolution of Government had been put into legal shape. The terms of the Resolution were known to all, and they were in no way altered in the Bill. He would only express an earnest hope that the Bill, in the shape in which it had been framed, or as nearly so as might be found expedient, would soon become the law of India.

The Motion was put and agreed to.

SCHEDULE TO BANK OF BENGAL ACT.

The Hon'ble MR. RITCHIE moved for leave to bring in a Bill to annex a Schedule to Act IV of 1862 (for regulating the Bank of Bengal). He stated that the sole object of this Bill was to add to that Act Schedule A which had been inadvertently omitted.

The Motion was put and agreed to.

The Hon'ble MR. RITCHIE then applied to his His Excellency the President to suspend Rules 15 and 16 for the Conduct of Business, in order that he might introduce the Bill.

His Excellency the PRESIDENT declared those Rules to be suspended, and the Bill was accordingly introduced.

The Hon'ble MR. RITCHIE then applied to His Excellency the President to suspend the Rules subsequent to Rules 15 and 16, which related to the publication of a Bill and the referring of it to a Select Committee, with a view to enable him to move that the Bill be passed.

His Excellency the PRESIDENT declared the Rules in question to be suspended, and the Bill was then passed.

INCOME TAX ASSESSMENT IN PRESIDENCY BANKS.

The Hon'ble MR. RITCHIE moved for leave to bring in a Bill for constituting certain Officers of the Banks of Bengal, Madras, and Bombay, respectively, ex-officio Assessors of certain of the Duties payable under Act XXXII of 1860, (for imposing Duties on the Profits arising from Property, Professions, Trades, and Offices). He stated that the object of the Bill was simply to substitute the Secretaries and other Officers of the Banks of Bengal, Madras, and Bombay for the Sub-Treasurers as Assessors for the Income Tax payable on the interest on Government paper which would henceforth be payable at the Banks.

The Motion was put and agreed to.

The Hon'ble MR. RITCHIE then applied to His Excellency the President to suspend the Rules 15 and 16 in order that the Bill might at once be

introduced. He stated that he would then move that the Bill be referred to a Select Committee, with instructions to report in a week. If the Committee did not hear that the agreement with the Bank of Bombay was agreed to, some alteration in the form of the Bill would be necessary.

His Excellency the PRESIDENT declared Rules 15 and 16 suspended.

The Hon'ble MR. RITCHIE then introduced the Bill, and moved that it be referred to a Select Committee, with instructions to report in a week.

The Motion was put and agreed to.

The following Select Committees were named :—

On the Bill to repeal certain Regulations and Acts relating to Criminal Law and Procedure—the Hon'ble Messrs. Ritchie, Harington, Forbes, and Erskine.

On the Bill for constituting certain Officers of the Banks of Bengal, Madras, and Bombay, respectively, ex-officio Assessors of certain of the Duties payable under Act XXXII of 1860 (for imposing Duties on the Profits arising from Property, Professions, Trades, and Offices)—the Hon'ble Messrs. Laing, Ritchie, Fitzwilliam, and Cowie.

PROTECTION AGAINST BAD COIN.

The Hon'ble MR. RITCHIE moved that the Select Committee on the Bill for the better protection of the Public against bad Coin be instructed to report in two months.

The Motion was put and agreed to.

PENAL CODE AMENDMENT.

The Hon'ble MR. RITCHIE moved that the Select Committee on the Bill to amend Chapter XII of the Indian Penal Code and to provide for certain offences against the Coin, be instructed to report in two months.

The Motion was put and agreed to.

NEW COINAGE.

The Hon'ble MR. RITCHIE moved that the Hon'ble Mr. Erskine be added to the Select Committee on the Bill to provide for a new Silver and a new Copper Coinage.

The Motion was put and agreed to.

The Council adjourned till Wednesday, the 19th instant, at 11 A. M.

M. WYLIE,

Depy. Secy. to the Govt. of India,

Home Department.

CALCUTTA,
The 12th March, 1862.

Abstract of the Proceedings of the Council of the Governor-General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic. 67.

THE Council met at Government House on Wednesday, the 19th March 1862.

PRESENT:

His Excellency the Viceroy and Governor-General of India, *presiding.*
His Honor the Lieutenant-Governor of Bengal.
His Highness the Maharajah of Puttiala, K. S. I.
The Hon'ble Sir H. B. E. Frere, K. C. B.
The Hon'ble Cecil Beadon.
Major-General the Hon'ble Sir R. Napier, K. C. B.
The Hon'ble S. Laing.
The Hon'ble H. B. Harington.
The Hon'ble H. Forbes.
The Hon'ble C. J. Erskine.
The Hon'ble W. S. Fitzwilliam.
The Hon'ble D. Cowie.
The Hon'ble Rajah Deo Narain Singh Bahadoor.
The Hon'ble Rajah Dinkar Rao Rugonauth Moontazim Bahadoor.

His Excellency the PRESIDENT said that, he could not take his seat at that Council for the first time, in succession to the great and good man who had hitherto presided over their deliberations, without expressing the gratification which it afforded him to find that, in the execution of the important task of legislating for India, he would have the advantage of the counsel and assistance of gentlemen of such high character and matured experience as those whom he now saw around him, and without giving utterance to the fervent hope and prayer that their united labors might be conducive to the advancement of the moral and material interests of this vast country, and to the happiness, prosperity, and contentment of all classes of Her Majesty's subjects by whom it was inhabited.

KING OF OUDE BILL.

The Hon'ble MR. BEADON presented the Report of the Select Committee on the Bill to protect the personal dignity of His Majesty the King of Oude.

INCOME TAX ASSESSMENT IN PRESIDENCY BANKS.

His Excellency the PRESIDENT postponed the presentation of the Report of the Select Committee on the Bill for constituting certain Officers of the Banks of Bengal, Madras, and Bombay respectively, ex-officio Assessors of certain of the

Duties payable under Act XXXII. of 1860 (for imposing Duties on the Profits arising from Property, Professions, Trades, and Offices,) in consequence of the absence of the Mover.

PARTITION OF ESTATES.

The Hon'ble MR. HARINGTON introduced the Bill to consolidate and amend the law relating to the partition of Estates paying Revenue to Government in the North-Western Provinces of the Presidency of Fort William in Bengal, and moved that it be referred to a Select Committee.

The Hon'ble RAJAH DINKAR RAO said that, he thought the principle of this Bill was important for those to whom it related. The little amendment it required could be made in the Select Committee. But so much of Section XXIX. which provided for the sale of an Estate for the liquidation of arrears of the Government Revenue, should be cancelled. He entirely disapproved of this provision. This process was not indispensably necessary for the realization of the Government arrears. But, owing to this process being in force, the Government was, without any just cause, exposed to the complaints of its subjects, and many were deprived of their rights. It was evident how much regard the people of Hindoostan had for their rights, and the property connected with them. He therefore thought it proper that the Government should prevent such process being in force with a view to the preservation of the rights of its subjects.

The Hon'ble MR. HARINGTON said that, as he understood the objections of the Rajah Dinkar Rao, he objected to the sale under any circumstances, of Landed Estates paying Revenue to Government for arrears of Revenue accruing thereon. He did not appear to object in particular to the sale of such Estates when in the course of a partition under this Bill, or any law for the time being in force. His objection appeared to be of a general nature. For his satisfaction he could tell him that, although the power to sell Estates for arrears of Government Revenue was still vested by law in Government, the power was very rarely exercised in the North-Western Provinces. He believed he might say the same in respect to the territories under His Honor the Lieutenant-Governor of Bengal. Whether the power should be retained or not was, he apprehended, a question foreign to the present Bill, and was too large a question to be entered upon in settling the provisions of this Bill. But so long as the power was retained, he submitted that, in the possible, though not probable, event of a sale of an Estate undergoing partition under this Bill, it was necessary to provide that the consequences of the sale should fall upon the defaulting proprietors, not upon the proprietors not in default. The Section objected to by the Rajah, contained a provision to this effect. The only object of the Section was to protect those who were not in arrears when the sale took place.

The Motion was put and agreed to.

MUNICIPAL ASSESSMENT, (RANGOON, &c.)

The Hon'ble Mr. Forbes introduced the Bill for extending certain provisions of Acts XIV. and XXV. of 1856 to the Town and Suburbs of Rangoon, and to the Towns of Moulmein, Tavoy, and Mergui, and for appointing Municipal Commissioners, and for levying rates and Taxes in the said Towns; and moved that it be referred to a Select Committee, with instructions to report in one month.

The Hon'ble Rajah Dinkar Rao said that, though the subject of this Bill was the Conservancy and improvement of the Town of Rangoon, &c., yet such Acts were not well calculated to attain their object, and were as unpopular to the people as other Acts which imposed Taxes and Duties. He therefore objected to the passing of such Acts. By Section VIII. of this Bill, the people were required to pay a Tax on the annual value of houses and buildings at the rate of from 10 Annas to 6½ Rupees. The average of this would be about 2½ Rupees per house. Besides this they were required to pay the Income Tax, Stamp Duty, Customs Duties, &c.; from this it would be seen how much they had to pay in Taxes. There were many large houses built in former times, which contained many persons, members of decayed families, who in these days were unable even to provide for their bare maintenance, but they were taxed without reference to their means. If this was the case, how could these persons be able to pay a Tax for the cleaning and lighting the roads in the town? They were also to pay Taxes on carriages and animals which they kept, and a fee of four Annas for registering them. If they unfortunately failed to register, a fine of 10 Rupees must be paid even for an animal of less value. In case they failed in this, they would also be deprived of their unregistered animals. After the sale of those animals, they were bound to accept, as the price, whatever balance might remain after deducting all the damages and expenses. Besides the fines which the Penal Code imposed for the ordinary crimes, that were already heavy, they were required to pay fines for making mistakes in the payment of such Taxes and Duties. A man who had a bullock cart, was required to pay 12 Rupees annually. Such a person earned his livelihood by giving his cart in hire; sometimes he got a customer, sometimes not; sometimes corn and other things were dear. In such a state of things, though he might be in want of his livelihood, still he must pay the impost of 12 Rupees annually. The same was the case with other animals and conveyances. The Government took from the Municipal income the expense of the persons and establishment employed for protecting the inhabitants of cities and towns. It was right that the subjects should pay the Government for being protected. But the Government should reckon that expense in the income from the Land Revenue, and any other proper Tax which it took from them. He thought such an Act would not be liked by the people of any country. It was to be observed that cities and towns were not found to be remarkable for their uncleanness owing to their having no such Municipal system, nor remarkably clean where that system was in force. The people themselves took an interest in the cleanliness of their cities and towns. It was often seen that the people, at the time of marriage ceremonies, or when their holidays came, or when it appeared

necessary for them, kept clean their houses and roads either by employing persons if they could afford to pay them, or by personal labor when they were unable to pay. The cleansing of cities and towns was for the benefit and comfort of all. It was therefore proper for the subjects to keep them clean, and for the Government to become a sharer in the work. But it was proper that the Officers of the Government should act as Members of the Municipal body, and do their best to make the people keep the places themselves clean. By this means the people would be saved the expense of contractors, &c., and from the oppression of such Acts.

The Hon'ble Mr. Forbes, in reply to the Rajah Dinkar Rao, said that this Bill introduced no new principle of taxation, but simply extended to Towns in the Burmese Provinces the laws which were in force in Calcutta, Madras, and Bombay. The Rajah's objections to this Bill were, in effect, objections to separate taxation for Municipal purposes everywhere. Prior to introducing this Bill, he (Mr. Forbes) had read the report of the debates in the Legislative Council on the Municipal Acts for the Presidency Towns. Those debates had reference to the rate of taxation, and how the fund should be distributed, in respect of lighting, cleansing, the supply of water, &c. But no objection was raised to the general principle of local taxation for such purposes. As the late Legislature had passed those Acts, and no objection to the principle of them had since been expressed, and the Executive Government had desired the introduction of this Bill, he would not now discuss that question. But his opinion was opposed to that of the Rajah Dinkar Rao. He thought that those who derived most benefit from certain public expenditure, might be fairly expected specially to contribute to it; and that when the residents in any locality paid rates for special objects, they would be induced to look after their proper application.

The Hon'ble Mr. Beadon said that this Bill had already been for a long time under consideration. It was brought forward in the Legislative Council, and had been referred to the Executive and Municipal Authorities of the Towns to which it related, and had received their assent. Some papers had been received from Rangoon, coupling the assent from that place with a request, that certain items now treated as Imperial Revenue might be added to the Municipal rates. The Government had assented to that request, so that no further objection appeared to exist.

The Hon'ble Sir Bartle Frere said that he understood the Rajah Dinkar Rao's objections to relate to the details, and not to the principle of the Bill. He wished that those who were interested in the application of Local Funds, should have a share in their management, and he (Sir Bartle Frere) believed that the small results which might be seen to follow great expenditure, might be traced to the great defect of a want of a proper amount of interest and of authority in the hands of those who paid the rates. He understood that the assent to the Bill from Rangoon had been coupled with a stipulation for a larger degree of authority than the Bill provided.

The Hon'ble Mr. Forbes said that he regretted if he had inadvertently misrepresented the argument of the Rajah Dinkar Rao. But he did understand him to say that Municipal expenditure should be defrayed out of the general taxation, particularly specifying the Land Revenue ; and that he objected to the taxation of carriages and cattle in towns, and to all similar particular taxation for local objects. With reference to the question of Sir Bartle Frere, he stated that the Bill was drawn in the form in which it was read in the Legislative Council, and in which it had been previously published. If the inhabitants of any of the Towns had made any objections, they were with the Executive Government. He (Mr. Forbes) had stated, in moving for leave to bring in the Bill, that he understood that the Government would lay before the Select Committee any paper it had received relative to the Bill; and that he had no doubt they would then be fully considered. They would be printed with the Report of the Committee, and it would then be open to any Member of the Council to move any amendment which he might think necessary. But he (Mr. Forbes) had not yet seen those papers.

The Motion was put and agreed to.

The following Select Committees were named :—

On the Bill to consolidate and amend the law relating to the partition of Estates paying Revenue to Government in the North-Western Provinces of the Presidency of Fort William in Bengal—the Honorable Messrs. Ritchie, Harington, and Erskine, and Rajah Deo Narain Singh.

On the Bill for extending certain provisions of Acts XIV and XXV of 1856 to the Town and Suburbs of Rangoon, and to the Towns of Moulmein, Tavoy, and Mergui, and for appointing Municipal Commissioners, and for levying rates and Taxes in the said Towns—the Honorable Messrs. Beadon, Ritchie, Forbes, and Erskine.

The Council adjourned till Wednesday, the 26th instant, at 11 A. M.

M. WYLIE,
Depy. Secy. to the Govt. of India,
Home Department.

Calcutta,
The 19th March 1862.

Abstract of the Proceedings of the Council of the Governor-General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic. C. 67.

THE Council met at Government House, on Wednesday, the 26th March 1862.

PRESENT :

His Excellency the Viceroy and Governor-General of India, *presiding.*
His Honor the Lieutenant-Governor of Bengal.
The Hon'ble Sir H. B. E. Frere, K. C. B.
The Hon'ble Cecil Beadon.
Major-General the Hon'ble Sir R. Napier, K. C. B.
The Hon'ble S. Laing.
The Hon'ble H. B. Harington.
The Hon'ble H. Forbes.
The Hon'ble C. J. Erskine.
The Hon'ble W. S. Fitzwilliam.
The Hon'ble D. Cowie.
The Hon'ble Rajah Deo Narain Singh Bahadoor.
The Hon'ble Rajah Dinkar Rao Rugonauth Moontazim Bahadoor.

KING OF OUDE BILL.

The Hon'ble MR. BEADON moved that the Report of the Select Committee on the Bill to protect the personal dignity of His Majesty the King of Oude be adopted, and that the Bill be passed. He stated that the amendments suggested by the Committee were not of an important character, and were intended chiefly to make the provisions of the Bill more distinct. The last Section would make it clear, that it was not the intention of Government to continue the title of King of Oude after the death of His Majesty. Mr. Beadon then proceeded to say, that he could not move the passing of the Bill without mentioning that the amendments proposed by the Select Committee were made with the full approval, and, indeed, chiefly at the suggestion, of their lamented and beloved colleague, Mr. Ritchie. It was, he believed, the last work on which Mr. Ritchie was engaged ; at any rate it was the last he completed, before he was seized with the fatal malady that hurried him prematurely to the grave. Having been his school-fellow at Eton, and having been intimately associated with him for many years both in private life and public duty, he (Mr. Beadon) might be permitted, in that

that place, to express the admiration with which, in common with the whole community, he regarded the many virtues which adorned his character, the esteem in which all held him, and the heart-felt sorrow with which all deplored his loss. It was a loss which, beyond his own family, those only could fully appreciate who had been accustomed to rely upon his sound judgment, his great legal knowledge, his varied and ripe experience, his ready advocacy of every good and useful measure, the clear and comprehensive views he brought to bear on every subject submitted to him, his amiable disposition, and, above all, the truth, honesty, and simplicity of his nature. In that Council, and not less in the Executive Government of India, his absence would long be painfully felt: and it was not too much to say that it would be difficult, if not impossible, for Her Majesty's Government to find a successor in all respects his equal.

The Motion was put and agreed to.

INCOME TAX ASSESSMENT IN PRESIDENCY BANKS.

The Hon'ble MR. LAING presented the Report of the Select Committee on the Bill for constituting the Secretaries and other Officers of the Banks of Bengal, Madras, and Bombay, respectively, ex-officio Assessors of certain of the Duties payable under Act XXXII. of 1860 (for imposing Duties on the Profits arising from Property, Professions, Trades, and Offices); and applied to His Excellency the President, to suspend Rules 23, 24, and 25 for the Conduct of Business, with a view to enable him to move that the Report of the Select Committee be adopted, and that the Bill be passed. He said that the Bill was purely a matter of form, to enable the Officers of the Banks, in making the payments formerly made by the Sub-Treasurers, to make the deductions on account of Income Tax which formerly had been made by the Sub-Treasurers. The Bill had been prepared by their lamented colleague, Mr. Ritchie, and would have been passed a fortnight ago, if the arrangement with the Bank of Bombay had been completed. That arrangement had since been completed and published in the Gazette.

His Excellency the PRESIDENT declared the Rules in question to be suspended.

The Hon'ble MR. LAING then moved that the Report of the Select Committee be adopted, and that the Bill be passed.

The Motion was put and agreed to.

CUSTOMS LAW CONSOLIDATION.

The Hon'ble MR. ERSKINE introduced the Bill for the consolidation and amendment of the laws relating to Customs Duties, and moved that it be referred to a Select Committee, with instructions to report thereon in one month, and that, under No. 18 of the Rules for the Conduct of Business in the Council, the publication of the Bill be suspended until the Select Committee's Report should have been received and considered. He stated that he proposed, in this instance, that the Council should take the same course as was taken with the

Bill

Bill to consolidate and amend the law relating to Stamp Duties, and for the same reason. This Bill, like that one, had for a long time been before the public, and had been fully considered by those who were most interested in its provisions. It stood at present in the shape in which it had been drawn by the Customs Committee, and published for general information. It had then been referred to the Local Governments, and by them to the Officers of Customs, and the Chambers of Commerce. Much correspondence had ensued, some of which had only lately reached his hands. There did not appear to be any objection to the principle of the Bill, namely, the consolidation of the laws relating to Sea Customs for all India ; but many valuable and reasonable suggestions had been received from different parts of the country, as might have been expected, when a Code of uniform rules for the whole country was under consideration. Local experience would in such a case discover incongruities and defects in the proposed law. The Select Committee, which he proposed, would consider the various papers which had been received, and recommend such improvements in the Bill as they might consider necessary. To publish it in its present shape would only mislead the public, and unnecessarily occupy the attention of the Council. On the Report of the Select Committee being received, the Bill could then be published with the amendments they suggested.

The Hon'ble MR. LAING said that it would be observed that the Bill related solely to Customs Regulations, and not to Tariffs of Duties, which formed a subject for separate consideration.

The Motion was put and agreed to.

RECOVERY OF RENT (N. W. P.)

The Hon'ble MR. HARINGTON moved for leave to bring in a Bill to amend Act X. of 1859 (to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal.) He stated that, that Act conferred original jurisdiction on the Revenue Courts in Bengal, in all cases of dispute arising between landlord and tenant, and between landlord and agent; but there was another class of cases of a somewhat analogous character which, as the Act was now framed, were not embraced by it. He alluded to disputes arising in joint undivided estates between the lumberdar, who was the recognized representative of the other sharers in such estates, and, as such, paid the dues of Government and the co-sharers whom he represented, whether on account of the portion of Government Revenue payable by such co-sharers or any of them, or relating to the adjustment and distribution, amongst the several sharers, of the profits of the estate after payment of the Government Revenue and the village expenses. The reasons which induced the Legislature to vest the Revenue Courts in Bengal with jurisdiction in the cases brought within their cognizance as Courts of first instance by the Act of 1859, seemed to apply with nearly equal force to cases such as those mentioned by him. The omission to include such cases in the Act was, he had reason to believe, simply an inadvertence

vertence. The omission was discovered by the Board of Revenue for the North-Western Provinces, before Act X. of 1859 became law; but it was not brought to his notice until after the passing of the Act, and there were particular reasons at the time which seemed to render it unadvisable to apply to the Legislature for an immediate alteration of the law. The first Section of this Bill would supply the omission. Then Section CXII. of Act X. of 1859, which applied to distraint, provided first, that no sharer in a joint undivided estate should exercise the powers of distraint, except through a manager authorized to collect the rents of the estate on behalf of all the sharers; and secondly, that in putteedaree estates in the North-Western Provinces, distraint should be made only through a lumberdar. The object of these restrictions was, obviously, to prevent two or more processes of distraint being taken out against the same crop by different shareholders, possessing, not a separate but only a joint interest in the land on which the crop was growing, or was grown; and there could be no doubt that the restrictions were very proper. But the Board of Revenue for the North-Western Provinces, had pointed out that, "while it would not be expedient to vest the power of distraint in all putteedars, its limitation to lumberdars only is in some instances productive of inconvenience; that, though the lumberdars are invariably responsible for the revenue which is paid through them, there are putteedaree estates in the North-Western Provinces containing puttees, of which the rents are not collected by a lumberdar, but by putteedars who are responsible to the lumberdar for their quota of the Revenue, and of the village expenses; and it would seem equitable that the power of distraint should be conferred on those who are entitled to collect the rent; and that to remedy this evil, it would be sufficient to add to Section CXII. the following words:—'or where the rent of a puttee is not collected by a lumberdar, through the puttoedar who is entitled to collect the rent.'" He concurred with the Board, and in the second Section of the Bill he proposed to amend the existing law in the manner recommended by the Board. The next Section was of a declaratory character, and had for its object to remove doubts which had arisen, as to whether it was intended that the decisions passed by Zillah Judges in regular appeal, under Section CLX. of Act X. of 1859, from decisions of the Revenue Courts, should be open to special appeal to the Sudder Court. The point had, he understood, been determined in the affirmative by the Sudder Courts at Calcutta and at Agra, and he thought there could be no doubt as to the correctness of their decision. An amendment of Act X. of 1859 being found necessary, it was considered advisable to give the force of law to the ruling of the Courts. The only other Section of the Bill which he deemed it necessary particularly to notice, was the one which proposed to give to the Revenue Courts, when making an award for an arrear of rent or Revenue, power to grant immediate execution on the verbal application of the judgment creditor. This power had lately been given to the Civil Courts in all cases of debt, damage, and the like, to the amount of 500 Rupees; and it was considered that the same power might be properly possessed by the Revenue Courts, in suits for arrears of rent or Revenue falling within their cognizance

under

under Act X. of 1859. Provisions, similar to the last two mentioned by him, were contained in a Bill to amend Act X. of 1859, now before the Legislative Council of Bengal. That Bill contained other provisions, some of them of a penal character, the extension of which to the North-Western Provinces was, he was happy to think, not required by anything in the state of that part of the country. It only remained to mention that this Bill would be restricted in its application to the North-Western Provinces.

The Motion was put and agreed to.

The following Select Committee was named:—

On the Bill for the consolidation and amendment of the laws relating to Customs Duties—the Honorable Messrs. Laing, Harington, Forbes, Erskine, Cowie, and Fitzwilliam.

The Council adjourned till Wednesday, the 2nd of April, at 11 A. M.

M. WYLIE,
Deputy Secy. to the Govt. of India,
Home Department.

CALCUTTA,
The 26th March 1862.

Abstract of the Proceedings of the Council of the Governor-General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., C. 67.

THE Council met at Government House on Wednesday, the 2nd April 1862.

PRESENT:

His Excellency the Viceroy and Governor-General of India, *presiding.*
His Honor the Lieutenant-Governor of Bengal.
The Hon'ble Sir H. B. E. Frere, K. C. B.
The Hon'ble Cecil Beadon.
Major-General the Hon'ble Sir R. Napier, K. C. B.
The Hon'ble S. Laing.
The Hon'ble H. B. Harington.
The Hon'ble H. Forbes.
The Hon'ble C. J. Erskine.
The Hon'ble FitzWilliam.
The Hon'ble D. Cowie.
The Hon'ble Rajah Deo Narain Singh Bahadoor.
The Hon'ble Rajah Dinkar Rao Rugonauth Moontazim Bahadoor.

REPEAL OF ACT II. OF 1835.

The Hon'ble MR. BEADON moved for leave to bring in a Bill to repeal in part Act II. of 1835. He stated that, after the first Burmese war, when the Provinces of Assam, Arracan, and Tenasserim were ceded to the British Government, separate Commissioners were appointed for those Provinces, who were under the general control of the Government of Bengal: Subsequently in 1835, Act II. of that year was passed, giving the superintendence and control of the Officers of those Provinces, in Civil and Criminal matters, to the Sudder Dewanny Adawlut and Nizamut Adawlut, and in Revenue matters to the Board of Revenue, and that Act was in operation at the present time. In the meantime Tenasserim had been placed under the direct authority of the Government of India, and recently it had been determined to place the three Provinces of Arracan, Tenasserim, and Pegu under a Chief Commissioner, as Chief Commissioner of British Burmah; who, under the Civil and Criminal Codes, might exercise the authority of the highest

Courts of Civil and Criminal jurisdiction. In would be inconvenient, under such circumstances, to allow appeals to the Sudder Courts, passing by his authority. The present Bill would leave Assam as it stood, but would remove Arracan and Tenasserim from the jurisdiction exercised under Act II. of 1835 by Sudder Court of Bengal.

The Motion was put and agreed to.

The Council adjourned till Wednesday, the 9th instant, at 11 A. M.

M. WYLIE,
Depy. Secy. to the Govt. of India,
Home Department.

CALCUTTA,
The 2nd April 1862.

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Abstract of the Proceedings of the Council of the Governor-General of India assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic. C. 67

The Council met at Government House, on Wednesday, the 9th April, 1862.

PRESENT:

His Excellency the Viceroy and Governor-General of India, *presiding.*
His Honor the Lieutenant-Governor of Bengal.
The Hon'ble Cecil Beadon.
Major General the Hon'ble Sir R. Napier, K. C. B.
The Hon'ble S. Laing.
The Hon'ble H. B. Harington.
The Hon'ble H. Forbes.
The Hon'ble C. J. Erskine.
The Hon'ble W. S. Fitzwilliam.
The Hon'ble D. Cowie.
The Hon'ble Rajah Deo Narain Sing Bahadoor.

STAMP DUTIES.

The Hon'ble MR. HARINGTON moved that the Report of the Select Committee on the Bill to consolidate and amend the law relating to Stamp Duties be adopted, and that the amendments of which notice had been given be made in the Bill.

His Excellency the PRESIDENT suggested that, in conformity with the Rules of the Council, the Motion should be that the Report of the Committee be taken into consideration, and that the amendments of which notice had been given be made in the Bill.

The Hon'ble MR. HARINGTON then made his Motion in that form. He stated that the greater part of the amendments he had proposed were purely verbal, adapted to remove doubts, and, in some instances, simply to alter the structure of sentences. The amendment in Section XII was designed to check frauds in post-dating Bills in order to avoid the payment of the proper amount of Stamp Duty. It was reported from the North-Western Provinces, and elsewhere, that a custom prevailed of dating Bills on the date on which they were paid to make

them appear payable at sight. The alterations in the Sections from XXXIV to XLVI respecting Stamp Vendors, were proposed in consequence of the present law having worked inconveniently, and having a tendency to prevent persons from taking the office. An important reduction would be made by the amendments in the amount of Stamp Duty payable on bonds. Instead of the stamp of four annas now payable on all bonds under 50 Rupees, which was an amount that pressed severely on some classes and led to evasions of the law, the Duty would be fixed at two annas. Considerable discussion had taken place respecting the amount of Stamp Duty chargeable on plaints in suits for rent. The Bill provided that, in suits for arrears of rent under Act X of 1859, the statement of claim should be written on paper bearing a stamp of one-fourth the value prescribed for suits instituted in the Civil Courts, and in all other suits instituted in the Courts of Collectors and Deputy Collectors under that Act, the statement of claim should be written on paper bearing a stamp of the value of eight annas. This rule had been adopted to enable the Zemindars to recover the rents which they required in order to pay their Government Revenue. But it had been provided that, after a decree was passed, the full amount of Stamp Duty might be charged to the party cast, and might be recovered by the Collector of the District. On the strong recommendation of the Board of Revenue, North-West Provinces, it had been deemed desirable to give up that proviso.

The Hon'ble Mr. BEADON enquired if the Bill provided for cases in which Vendors purchased stamps for sale instead of receiving them on commission, and suggested that it was not desirable that such restrictions and conditions should be imposed on that class of Vendors as on others, but that, if possible, they should be encouraged.

The Hon'ble Mr. HARINGTON referred to Section XXXIV as proposed to be amended, and to the Section proposed to be introduced after Section XLVI.

The Hon'ble MR. ERSKINE, with the permission of His Excellency the President under Rule 26, proposed amendments of which notice had not been given :— 1st, the insertion after the words "into force" in line 2 of Section 1, of the words and figures "*Regulation XII* 1830, *of the Bombay Code.*" This Regulation would be superseded by this Bill, and the Bombay Government were favorable to its repeal. 2nd, at page 26 of Schedule A, in the "Exemption for the Presidencies of Madras and Bombay" at the end of Article 9, the omission of all the words after the words "with respect to," and the subsitition. of the words "*suits cognizable by Collectors in the Presidency of Bombay.*" This change was necessary because Regulation VI of 1828 of the Bombay Code had already been repealed. And, 3rdly, at page 30 of Schedule B, the omission of the words "as above" in the last line but one of the "Special Rule for the Presidency of Bombay." The words were redundant and created an ambiguity.

The Motions of the Hon'ble MR. ERSKINE were severally put and agreed to

The amendments proposed by the Hon'ble Mr. Harington were then put and agreed to as follows :—

Section I.—The addition of the following words :—

"*In respect of any such Deed, Instrument, or Writing, the provisions of the Acts and Regulations which were in force at the time such Deed, Instrument, or Writing shall have been made or executed, or such proceeding or matter shall have taken place, shall be applicable in the same manner as if this Act had not been passed.*"

Section III.—The omission of the words "every such person so offending (unless in any case in which a higher penalty is imposed by this Act) shall" in lines 14 to 16, and the substitution of the words "*annexed to this Act, every such person so offending shall (unless in any case in which a higher penalty is imposed by this Act),*".

Section V.—The omission of all the words after the word "by" in line 7, and the substitution of the words "*an adhesive Stamp affixed to the paper upon which such Instrument is written.*"

Section VI.—The addition of the words "*affixed thereto*" at the end of the Section.

Section VIII.—The omission of the word "be" in line 13, and the substitution of the words "*admit of being.*"

Section IX.—The insertion of the word "*accepted*" before the word "endorsed" in line 8.

Section XI.—The omission of the word "be" in line 27, and the substitution of the words "*admit of being ;*" also the substitution of the word "*accept*" before the word "pay" in line 30.

Section XII.—The omission of the word "three" in line 6, and the substitution of the word "*more.*"

The introduction of the following new Section after Section XII :—

"*If any person, in order to avoid the payment of the Duty prescribed by Schedule A annexed to this Act, shall make or draw any Bill of Exchange bearing a date subsequent to the date on which such Bill is actually made or drawn, or if any person, knowing that such Bill has been so post-dated, shall take or receive such Bill, or shall accept, pay, endorse, transfer, or in any manner negotiate the same, every such person so offending shall forfeit a sum not exceeding five hundred Rupees.*"

Section XIII.—The substitution of the words "*Schedule A annexed to this Act*" for the words "said Schedule A" in line 18.

Section XIV. Clause 1.—The introduction of the words "*under Section II of this Act*" after the word "stamped" in line 3 ; the insertion of the words "*on payment of*" after the word "stamped" in line 18 ; and the insertion of the words "*on paper bearing the proper Stamp*" after the word "writing" in line 32.

Clause 2.—The insertion of the words "*Section II of*" after the word "under" in line 37 ; and the substitution of the words "*six weeks*" for the words "thirty days" in line 43.

Clause 5.—The insertion of the word "*may*" after the word "aforesaid" in line 96, and the omission of the word "may" in line 100.

Clause 6.—The insertion of the words "*the whole or*" before the word "any" in the last line.

Section XVI. Clause 1.—The omission of the words "a Civil Court" in line 1, and the insertion of the same words after the word "Act" in line 5; also the insertion of the words "*Schedule A annexed to*" after the word "by" in line 8.

Section XVIII. The substitution of the words "*Sections XIV and XVI*" for the words "Section XIV" in line 3; and the insertion of the words "*either directly or*" after the word "authority" in line 10.

Section XXIX. The omission of the words "prescribed as aforesaid by the Governor-General of India in Council and" in lines 13 to 15; and the addition of the following proviso :—

"*Provided that nothing in this Act shall be held to repeal any special provision in the Code of Civil Procedure or in any other Act or Regulation for the use of plain or unstamped Paper in any judicial proceeding, unless such provision shall be expressly repealed by this Act.*"

The introduction of the following new Section after Section XXX :—

"*All questions relating to the valuation of claims for the purpose of determining the amount of Stamp Duty chargeable under Schedule B annexed to this Act on any petition of plaint or appeal, shall be decided by the Court in which such petition of plaint or appeal is filed, subject to any appeal to which the orders of such Court are open.*"

Section XXXIV. The addition of the words "*and what accounts of such Stamps shall be kept for them The license may be for any time, and may at any time be revoked by the authority granting the same.*"

Section XXXVI. The substitution of the word "*sale*" for the word "issue" in line 10.

Section XLII. The substitution of the words "*from him*" for the words "by the provisions of any bond he may have entered into" in lines 3 to 5; and the substitution of the words "*such Collector*" for the word "him" in line 8.

Section XLIII. The insertion of the word "*revocation*" before the word "or" in line 2; the substitution of the words "*the Stamps entrusted to him for sale on the part of Government*" for the words "all his transactions in relation to Stamps kept according to the provisions of any bond he may have entered into" in lines 9 to 12; the insertion of the word "*such*" after the word "any" in line 12; the insertion of the words "*for sale*" after the word "remaining" in line 13; the substitution of the words "*in respect of such Stamps*" for the words "on the abovementioned accounts in line 16;" and the substitution of the word "*shall*" for the word "may" in line 22.

Section XLIV. The substitution of the word "*the*" for the words "his Executor or Administrator, or in case there be no Executor or Administrator, any other" in lines 2 to 5; the insertion of the words "*for sale on the part of Government*" after the word "received" in line 12; the substitution of the word "*sold*" for the word "issued" in the same line; and the substitution of the words "*kept by such deceased Vendor in respect to such Stamps, of which*

Stamps and account such person as aforesaid" for the words "of the transactions of such deceased Vendor in relation to Stamps which shall have been kept according to the provisions of any bond which such deceased Vendor may have entered into, of which Stamps and accounts such Executor, Administrator, or other person" in lines 14 to 19.

The introduction of the following new Section after Section XLVI :—

"*If any licensed Vendor die, or if his license expire or be revoked, the Stamps in the possession of such Vendor of which, after deducting the percentage or discount allowed, he has paid the amount to Government may, within three months from the date of the death of such Vendor, or from the date on which his license expired or was revoked, as the case may be, be brought to the Collector of Stamp Revenue of the District, who shall repay such amount. Provided that such Stamps were actually in the possession of such Vendor for the purpose of sale, and were procured by him from the Collector of Stamp Revenue of the District.*"

Section XLVII. Clause 1.—The addition of the words "*or to any adhesive Stamp.*"

Clause 2.—The substitution of the words "*six months*" for the words "one year" in line 68.

Section XLVIII. Clause 1.—The omission of the words "and if" in line 19 and the substitution of the words "*Provided that, if the Deed, Instrument, or Writing be framed in accordance with a form prescribed by any Act or Regulation in force and shall not contain such purchase or consideration money, then such purchase or consideration money shall be truly expressed and set forth in words at the foot of such Deed, Instrument, or Writing. If*".

Section LIII.—The addition of the words "*The words 'British Territories in India' denote the Territories vested in Her Majesty by the Statute* 21 *and* 22 *Victoria c.* 106, *entitled an Act for the better Government of India.*"

Section LIV.—The substitution of the words "*on the* 1*st day of June*" for the words "from the 1st of May" in the last line of the Section.

SCHEDULE A. Article 2.—The substitution of the words "*periodical payment not otherwise charged for in this Schedule*" for the words "any periodical payment."

Article 5.—The addition of the words "*or upwards.*"

Article 10.—The insertion of the words "*at sight*" after the words "If payable" in line 10; the substitution of "2" annas, for "1" anna and "6" pies, in line 2 of the 2nd column, under the head of "Proper Stamps"; and the introduction of the following Clause before the Clause commencing "If drawn in a set, &c. :"—

"*If bearing no date, the same Stamp as if payable at sight, unless any date or period of payment be specified, in which case the same Stamp as prescribed by Article* 12 *for a bond of the same amount.*"

Also the insertion of the words "*prescribed by Article* 12" after the words "the same Stamp as" under the head of "Proper Stamps" opposite to the last Clause of the Article.

Article 12.—The omission of " If for any sum not exceeding 50 Rupees, 4 As." and the substitution of the following :—

" If for any sum not exceeding.....	25 *Rs...*	2 *As.*
Above 25 *Rupees and not exceeding.....*	50 *Rs...*	4 *As.*"

Article 13.—The addition of the following Clause :—

" If such loan is for a period exceeding three months, the same Stamp as prescribed by Article 12 *for a bond of the same amount."*

Article 14.—The substitution of the words, "*prescribed by Article* 12 *for a bond*" for the words " for a money bond" under the head of " Proper Stamps."

Article 15.—The insertion of the words "*prescribed by Article* 12" after the words " The same Stamp as" under the head of " Proper Stamps."

Articles 16 and 17.—The same amendment as the above.

Article 18.—The addition of the words "*or expressly exempted from the payment of Stamp Duty by this Schedule.*"

Article 28.—The omission of this Article, and the substitution of the following new Article :—

" Copy.—Copy or Extract of any Deed, Instrument, or Writing attested or certified to be a true copy or extract and furnished for the purpose of being given in evidence in any Civil or Revenue proceeding or made for the security or use of any person being a party to, or taking any benefit or interest immediately under such Deed, Instrument, or Writing ...	*The same Duty as the original when such Duty does not exceed 8 annas.*
If the Duty chargeable on the original exceed 8 *Annas, but do not exceed* 10 *Rupees ...*	1 *Rupee.*
If the Duty chargeable on the original exceed 10 *Rupees, but do not exceed* 50 *Rupees ...*	2 *Rupees.*
If the Duty chargeable on the original exceed 50 *Rupees ...*	5 *Rupees.*

Note.—Every copy bearing the proper Stamp which shall at any time be offered in evidence, shall be deemed to have been made for that purpose."

The introduction of the following new Article after Article 32 :—

" Counterpart of a lease.	*The same Stamp as for such lease.*

EXEMPTION.

Counterpart of a lease executed by a ryot or other actual cultivator of the soil ; provided that no fine or premium be paid as part of the same transaction.

(For Madras.)

Counterpart of a lease executed between landlord and tenant relative to lands in the Presidency of Madras, subject to the payment of Revenue to Government.

A counterpart of a lease includes a Kubuleut and the like."

Article 35.—The substitution of "1 *Rupee*" for the words "As an agreement" under the head of "Proper Stamps."

Article 36.—The insertion of the words "*not otherwise charged for or expressly exempted from Stamp Duty under this Schedule*" after the word "Act" in line 4; and the omission of the following exemptions:—

"EXEMPTION.

Counterpart of a lease executed by a ryot or other actual cultivator of the soil; provided that no fine or premium be paid as part of the same transaction.

(For Madras and Bombay.)

Counterpart of a lease executed between landlord and tenant relative to lands in the Presidency of Madras or Bombay, subject to the payment of Revenue to Government.

A counterpart of lease includes a "Kubuleut and the like."

Article 41.—The omission of the words "and Bombay" in the heading of the last Exemption, and of the words "or Bombay" in lines 3 and 4 of the same Exemption.

Article 62.—The insertion of the words "*annexed or*" after the word "Schedule" in line 1.

Article 63.—The insertion of the words "*prescribed by Article* 12" after the words "the same Stamp as" under the head of "Proper Stamps."

General Exemptions.—1st Note. The omission of the words "to or" before the word "by" in line 3; and the substitution of the words "*by a Municipal Commissioner, or*" for the words "to or" in lines 5 and 6.

SCHEDULE B. Article 5 (printed by mistake as Article 6 at the top of page 23.) The introduction of the following words before the Exemption:—

"*If the judgment be translated into any other language, application for a copy of the translation may be made on unstamped paper, and a copy of the translation may be given in addition to or in place of the copy of the judgment, and shall bear the same Stamp;*" and the addition to the Exemption of the words "*when such copy is taken out of the Court making the same.*"

Article 6.—The omission of this Article and the substitution of the two following new Articles:—

"6. *Copy of any Revenue or Judicial proceeding or Order not provided for in Article* 6 *or falling under the Exemption to that Article, or Copy of any Account, Statement, Report, or the like taken out of any Civil or Criminal Court or any Revenue Court or Office for use or reference, or when left on proceedings in place of the original withdrawn, per sheet.* } 8 Annas.

6a. *Copy of any Deed, Instrument, or Writing, stamped in accordance with Schedule A annexed to this Act when left on proceedings in place of the original withdrawn.*	*The same Stamp as the original when such Stamp does not exceed 8 annas, otherwise a Stamp of 8 annas per sheet.*

EXEMPTION.

Copy of any such Deed, Instrument, or Writing when the original does not require a Stamp under the said Schedule A."

Article 9.—The omission of the Clause "All petitions, applications, charges, and informations respecting crimes and offences. Petitions from prisoners, convicts, persons under examination or otherwise in duress, or under restraint of the Court or its Officers" at page 26, under the head of "General Exemptions:" and the substitution of the following Clause :—

"*Petition, application, charge, or information respecting any crime or offence. Petition from any prisoner, convict, or other person in duress or under restraint of the Court or its Officers.*"

Article 10.—The insertion of the words "*or appeal*" after the word "plaint" in line 1; the omission of the heading "Scale for Plaints;" the substitution of the words "*lands exempt from the payment of Revenue*" for the words "Lakhraj, Enam, or Rent-free land" in Note *(d)*; the substitution of the words "*Government Revenue or rent of land paying Revenue to Government, or of money in the hands of an Agent of such land*" for the words "rent or of money in the hands of an Agent," in line 4 of the special Rule for Bengal marked *(g)*; the insertion of the words "*relating to lands paying Revenue to Government*" after the word "Act" in line 10 of the same Rule; and the omission of the proviso at the end of the same Rule.

Article 11.—The substitution of the word "*or*" for the word "and" in line 1.

Article 12.—The addition of the words "*where petitions are required to bear a Stamp*" after the words "to be charged as petitions" under the head of "Proper Stamps."

CRIMINAL PROCEDURE CODE AMENDMENT.

The Hon'ble MR. BEADON introduced the Bill to amend the Code of Criminal Procedure, and moved that it be referred to a Select Committee. He stated that, this Bill had been proposed by Mr. Ritchie, in order to enable the Governor-General in Council, in extending the Code of Criminal Procedure under Section 445 of that Code, to make some necessary modifications. These modifications had been explained by Mr. Ritchie as follows :—1st, in regard to the Courts by which offences might be tried and sentences passed; 2ndly, with regard to preliminary enquiries by the Police, but the Government would be restricted from enlarging the powers given by the Code; 3rdly, with regard to the number of the Judges necessary to pass a sentence of death or penal servitude; 4thly, with respect to the power of revision by the several Criminal Courts over the subordinate Courts; and 5thly, in regard to the confirmation of sentences of death by the Chief Commissioners.

There might be a difference of opinion with respect to the details of some of these points, but he thought that they would be best considered in Select Committee. The Council were only now called upon to affirm the principle that, in extending the Code of Criminal Procedure to Non-Regulation Provinces, the Governor-General in Council might make certain modifications adapted to the Courts and systems of administration of those Provinces.

The Motion was put and agreed to.

The Hon'ble MR. BEADON then moved that it be an instruction to the Committee to report in a fortnight.

The Motion was put and agreed to.

SUBORDINATE MEDICAL OFFICERS' WIDOWS' & ORPHANS' FUND.

The Hon'ble MR. BEADON introduced the Bill for the dissolution of the Subordinate Medical Officers' Widows' and Orphans' Fund, and the distribution of the Funds belonging thereto, and moved that it be referred to a Select Committee. He stated that this Bill was also prepared by Mr. Ritchie, who explained its object when he moved for leave to bring it in.

The Motion was put and agreed to.

REPEAL OF ACT II OF 1835.

The Hon'ble MR. BEADON introduced the Bill to repeal in part Act II of 1835, and moved that it be referred to a Select Committee. He stated that the Bill was purely a matter of form, and therefore he would propose that the Committee be instructed to report in a week.

The Motion was put and agreed to.

RECOVERY OF RENT (N. W. P.)

The Hon'ble MR. HARINGTON introduced the Bill to amend Act X of 1859 (to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal) so far as it relates to the territories under the Government of the Lieutenant-Governor of the North-Western Provinces, and moved that it be referred to a Select Committee.

The Motion was put and agreed to.

REGISTRATION OF ASSURANCES.

The Hon'ble MR. FORBES introduced the Bill to provide for the Registration of Assurances, and moved that it be referred to a Select Committee. He stated that, when he first undertook to introduce a Bill on this subject, he had obtained from the late Legislative Council the appointment of a Select Committee to prepare it. The Bill so prepared had been submitted to that Council and read a first and second time, and on the latter occasion had elicited comments from the learned Chief Justice. It was then referred to another Select Committee and published. Many suggestions were received, and the Bill was presented to the Council as settled by that Committee with many amendments and modifications.

It had then been carefully reviewed by the late Mr. Ritchie, who, while he fully approved of its principle, had made several amendments in the arrangement of its provisions. The Bill, therefore, had been prepared by one Select Committee, and after being revised by another, was now presented to the Council with further amendments suggested by their late Hon'ble colleague. This statement would relieve him (Mr. Forbes) from the charge of presumption in proposing a measure of so much importance.

The Motion was put and agreed to.

LIMITATION OF SUITS.

The Hon'ble MR. LAING moved for leave to bring in a Bill to amend Act XIV of 1859 (to provide for the limitation of suits.) He said that the subject of this Bill had been considered on the last occasion when Mr. Ritchie attended a Meeting of Council. Without entering into a discussion on the principle of the Limitation Act, there appeared to be a fair claim for a special provision in respect of Tradesmens' Bills, which had been incurred before the passing of that Act. Those debts had subsequently in many instances been transferred in new adjustments of business transactions, in the expectation that the old period of limitation would continue. The Bill would make a special exception in respect of such debts up to the 1st January 1865, which would be the period of nearly six years from the passing of the Act of 1859.

The Motion was put and agreed to.

SUPREME COURTS CRIMINAL PROCEDURE.

The Hon'ble MR. HARINGTON moved for leave to bring in a Bill to repeal Act XVI of 1852 in those parts of British India, in which the Indian Penal Code is in force, and to re-enact some of the provisions thereof with amendments, and further to improve the adminstration of Criminal justice in Her Majesty's Supreme Courts of Judicature. He said that the learned Chief Justice at Calcutta had done him the honor of asking him to move for leave to introduce this Bill. He could have wished that the task of introducing the Bill had devolved on some person learned in the law of England, and having a practical acquaintance with the manner in which Criminal trials were held in the Supreme Courts. Their late lamented colleague, the Hon'ble Mr. Ritchie, had undertaken to introduce the Bill, and had his valuable life been spared, there could be no doubt that in his hands the Bill would have had ample justice done to it, and that the Council would have benefited by his large legal experience and knowledge in disposing of any points of difficulty arising in the consideration of the Bill. The principal object of the Bill was to adapt the Procedure of the Supreme Courts to the trial of offences punishable under the Indian Penal Code. On the 1st January last, the substantive Criminal Law relating to offences and persons within the jurisdiction of the Supreme Courts had undergone the same complete change as in places beyond the limits of the jurisdiction of those Courts. There was now one uniform substantive Criminial Law for all India, *viz.*,

the Indian Penal Code; but while, contemporaneously with the introduction of the Indian Penal Code, a Code of Criminal Procedure had been given to the Mofussil Courts, which had been prepared in reference to that Code, and was well suited to carry out its provisions, the Code of Criminal Procedure previously in force in the Supreme Courts was still in force in those Courts. Two Criminal Sessions for the trial of offences punishable under the Indian Penal Code had already been held at Calcutta, and he presumed that similar Sessions had been held at Madras and Bombay. In the course of the trials held in Calcutta the unsuitableness of the present Code to offences falling under the Indian Penal Code was very apparent, and some inconvenience had been experienced. He might mention that the Judges of the Supreme Court of Judicature at Calcutta would, some time ago; have prepared a Code of Criminal Procedure for the conduct of trials in that Court under the Indian Penal Code, had it not been for the receipt of instructions from Home which led them to defer taking any steps in the matter. It seemed to be supposed at Home that the Code of Criminal Procedure which was now in force in the Mofussil Courts was equally well adapted to trials in the Supreme Courts of Judicature. This was the case as regarded many of the provisions of the Mofussil Code of Criminal Procedure, but it was not so as regarded all the provisions of that Code, and in some respects there was no doubt that, as regarded Supreme Courts, the Mofussil Code was defective. The preparation, therefore, of a Code of Criminal Procedure for the Supreme Courts in India, adapted to the trial of offences under the Indian Penal Code, in which such of the provisions of the Mofussil Code as were suitable could be embodied, seemed a necessity. He would not occupy the time of the Council by going through the provisions of the Bill which he had asked for leave to introduce, in detail. The Bill would be printed immediately, and copies of it would be circulated without delay. He would content himself with remarking that the Bill had been prepared by the Hon'ble and learned Chief Justice, Sir Barnes Peacock, who although not himself the author of the Indian Penal Code, yet from the part which he had taken in the revision of the Code and in passing it through the late Legislative Council, occupied a position in regard to the Code scarcely second to that of the Noble and learned Author of the Code, the late Lord Macaulay. In preparing the present Bill, the Hon'ble and learned Chief Justice had had the assistance of his Hon'ble and learned colleagues, and he (Mr. Harington) thought that a Bill thus prepared, and having for its object to provide a Code of Criminal Procedure for the Court presided over by the learned Judges, might be safely accepted by the Council and passed into law. He had referred to the inconvenience which had been experienced from the want of a suitable Procedure Code, at the Sessions which had already been held at Calcutta for the trial of offences under the Indian Penal Code. Similar inconvenience would continue to be experienced until this Bill was passed, and he had been desired, therefore, when introducing the Bill to ask for the suspension of the Rules of the Council with a view to the Bill being passed into law at once. With regard to Madras and Bombay, he might mention that, although the Bill was so

framed as to make it of general application, it was proposed to leave the time at which the Bill should take effect in those Presidencies to be determined by the local Governments. This would give the Hon'ble and learned Judges of Her Majesty's Supreme Courts at Madras and Bombay, whom there was not time to consult, an opportunity of stating, in communication with the local Governments, any objections that they might have to any of the provisions of the Bill before the Bill came into operation in their Courts.

The Motion was put and agreed to.

NEW COINAGE.

The Hon'ble MR. LAING moved that the Select Committee in the Bill to provide for a new Silver and a new Copper Coinage be instructed to report at the next Meeting of the Council. He stated that the Bill was one of a formal character, to legalize the Coinage with the new devices, and it was desirable that it should be passed without delay.

The Motion was put and agreed to.

The following Select Committees were named :—

On the Bill to amend the Code of Criminal Procedure—the Hon'ble Messrs. Beadon, Harington, Forbes, and Erskine.

On the Bill for the dissolution of the Subordinate Medical Officers' Widows' and Orphans' Fund, and the distribution of the Funds belonging thereto—the Hon'ble Messrs. Beadon, Harington, Forbes, and Erskine.

On the Bill to repeal in part Act II of 1835—the Hon'ble Messrs. Beadon, Harington, Forbes, and Erskine.

On the Bill to amend Act X of 1859 (to amend the law relating to the Recovery of Rent in the Presidency of Fort William in Bengal) so far as it relates to the territories under the Government of the Lieutenant-Governor of the North-Western Provinces—the Hon'ble Messrs. Harington and Erskine, and Rajah Deo Narain Singh.

On the Bill to provide for the Registration of Assurances—the Hon'ble Messrs. Beadon, Harington, Forbes, and Erskine, and Rajah Deo Narain Singh.

The Council adjourned till Wednesday, the 16th instant, at 11 A. M.

M. WYLIE.
Depy. Secy. to the Govt. of India,
Home Department.

CALCUTTA,
The 9th April, 1862.

Abstract of the Proceedings of the Council of the Governor-General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., C. 67.

The Council met at Government House, on Wednesday, the 16th April 1862.

PRESENT:

His Excellency the Viceroy and Governor-General of India, *Presiding.*
His Honor the Lieutenant-Governor of Bengal.
The Hon'ble Cecil Beadon.
Major-General the Hon'ble Sir R. Napier, K. C. B.
The Hon'ble S. Laing.
The Hon'ble H. B. Harington.
The Hon'ble H. Forbes.
The Hon'ble C. J. Erskine.
The Hon'ble W. S. Fitzwilliam.
The Hon'ble D. Cowie.
The Hon'ble Rajah Deo Narain Singh Bahadoor.

STAMP DUTIES.

The Hon'ble MR. HARINGTON moved that the Bill to consolidate and amend the law relating to Stamp Duties be passed.

The Motion was put and agreed to.

REPEAL OF ACT II OF 1835.

The Hon'ble MR. BEADON presented the Report of the Select Committee on the Bill to repeal in part Act II of 1835.

NEW COINAGE.

The Hon'ble MR. HARINGTON presented the Report of the Select Committee on the Bill to provide for a new Silver and a new Copper Coinage.

CRIMINAL LAW REPEAL.

Also the Report of the Select Committee on the Bill to repeal certain Regulations and Acts relating to Criminal Law and Procedure.

LIMITATION OF SUITS.

The Hon'ble MR. LAING introduced the Bill to amend Act XIV of 1859 (to provide for the limitation of suits), and moved that it be referred to a Select Committee with instructions to report in a week.

The Motion was put and agreed to.

SUPREME COURTS' CRIMINAL PROCEDURE.

The Hon'ble MR. HARINGTON postponed the introduction of the Bill to repeal Act XVI of 1852 in those parts of British India in which the Indian Penal Code is in force, and to re-enact some of the provisions thereof with amendments, and further to improve the administration of Criminal Justice in Her Majesty's Supreme Courts of Judicature. He stated that he regretted that the Bill was still in the Printer's hands.

CUSTOMS DUTIES.

The Hon'ble MR. LAING moved for leave to bring in a Bill to amend Act X of 1860 (to amend Act VII of 1859, to alter the Duties of Customs on Goods imported or exported by Sea.) He said :—

In bringing forward the Budget of the Government of India for 1862-63 the first point is to state the result of that of 1861-62.

The circumstances of the last Budget were remarkable.

A chronic deficit, continued with scarcely an intermission for twenty years, had added £50,000,000 to the national debt of India. That deficit had been increased by the effects of the Mutiny, until, in the three years from 1857 to 1860, it reached the enormous average of £12,000,000 a year, and all the efforts of the Government, aided by the imposition of new Taxes which convulsed Indian society had still left us in 1860-61 with an apparently hopeless deficit estimated at £6,000,000.

This state of things had caused a general and wide-spread alarm, and so affected credit that a Loan was well-nigh impossible, while the steady decline of the Cash Balances seemed to be bringing us rapidly to the point where, without a Loan, the expenses of the State could no longer be met.

Under these circumstances, the Government of India applied itself vigorously to the further reduction of Expenditure,—so vigorously that, as I shall presently show, out of an Expenditure of £29,000,000 open to revision, a saving of £5,000,000 was effected in a single year. Then, as often happens when a patient suffering from a lingering malady resolutely breaks off his old habits, nature comes to his aid with its restorative powers, and, in a wonderfully short time, he passes from prostration to health. So, in our case, the Famine was mercifully arrested; the growing prosperity of the country gave buoyancy to the Revenue; the produce of the Stamps surpassed expectation, and the aspect of affairs changed so suddenly that, after finding myself in January struggling with an apparently hopeless deficit, I was able, in April, to my own great surprise, and I believe that of every one else, to produce a Budget in equilibrium.

If the feeling here was one of astonishment, in England it amounted almost to incredulity.

Indian Estimates had been for years proverbially fallacious, and when I went home in June, the first thing every one said to me was, "Surely, this is too good to be true." Even high Official Authorities thought that I had been too sanguine, and estimated my deficiency at upwards of £1,000,000.

My reply was that time would show; but knowing how carefully the Estimates had been taken on the safe side, I felt confident that, provided the Military reductions which had been ordered were carried out, the result would confirm the Budget.

It has more than confirmed it, and if things had remained as they were in April, there would have been a large surplus.

As it is, although we have spent £1,458,140 more than was contemplated in April, on Public Works and Opium Advances, and have given up the License Tax, we have no deficit.

This result is so vitally important that I am anxious you should understand the process by which the figures are arrived at, and judge for yourselves how far they can be relied upon.

We are now in April, the last month of the Financial year, and we have Returns of the actual Receipts and Expenditure, nearly perfect, in all cases for nine, and in most for ten or even eleven months.

I will not say that these Returns are absolutely perfect, for our Financial Machinery is new, and you cannot make men Accountants, or make them understand novel forms, in a day. Reforms are being introduced by which we hope to make the Machinery of Financial Administration as perfect in India as it is in England, but in the mean time it is greatly improved, and with Returns of all the more important actual results for ten months of the year carefully checked, the margin of possible error in our revised Estimates must be very narrow.

Moreover, there is one test which may be applied with unerring accuracy, in ascertaining the general result of our Financial situation, viz., that of the Cash Balances.

If a man makes all his receipts and payments through his Banker, and contracts no debts or obligations, the Balance in his Bank-book at the end of the year *must* show whether he has or has not lived within his Income.

So, in our case, we have incurred no fresh debt during the present year, our outstanding liabilities have diminished rather than increased, and therefore the state of our Cash Balances affords an answer of mathematical certainty to the question whether we have or have not realized an equilibrium.

But, as in taking the Sun's altitude to ascertain a ship's place on the waste of waters, certain corrections are necessary, so, in finding the Financial latitude of the ship of the State by the Cash Balances, we must be careful to distinguish between what is real and what is only apparent.

I fear these details are wearisome, but the importance of firmly establishing our actual Financial position is so vital, that I must ask your forbearance.

The apparent aggregate Cash Balance in the different Treasuries of India on the 30th April 1861 was £14,608,121.

On the 31st March 1862, it was £17,690,000, and I will assume it to continue at the same amount up to the close of the Financial year on the 30th April, though it showed a large increase in April last year.

The apparent increase of Balance during the year is therefore £3,082,000.

But, in the first place, we ought to deduct from the Cash Balance of last year a certain amount, not properly belonging to it, consisting of Bullion deposited at the Mint for the purpose of Coinage. It seems that at Bombay a practice has grown up of leaving large sums of Bullion for a considerable time at the Mint, and using the Certificates as a sort of large Bank Notes. The amount of such outstanding Certificates, on the 30th April 1861, was £.030,000, and in the Balance of the 31st March 1862, there is no such amount, the operation of the new Currency Act having led to a discontinuance of the practice.

This makes the increase of true Cash Balance during the year equal to £4,012 000. But from this must be deducted what we owe to England on the balance of transactions of the year.

Our Revenue is all received in India, but of our Expenditure nearly one fourth, or about £9,000,000, takes place in England.

This is met to the extent of about £6,000,000 by expenditure on Railways, the Capital for which is raised in England and retained there and to a smaller extent by other payments made by India on account of the Imperial Government.

The Balance, which, according to the most careful Estimate I can make for the current year, is £3,000,000, as due to England, and ought to be remitted, or set aside for remittance.

In addition to this, a remittance of 1,000,000 in Bullion was received early in the Financial year from England, under the apprehension that the Famine might have involved us in serious difficulties. Of this £700,000 only has been returned up to the present time, so that in the entire transactions of the year we owe England £3,300,000.

This reduces the true increase of Cash Balance on the 31st March 1862, over the 30th April 1861, to £712,000. But I am aware of no other corrections, and am totally unable to assign any reason, other than that of *bonâ fide* excess of Income over Expenditure, why the Cash Balance should show any increase. This indicates a result better by £570,000 than is shown by taking the aggregate of the separate Estimates of Revenue and Expenditure revised with the experience of ten months' Returns of actual results.

In using the figures, therefore, of this revised Estimate, I think you will feel that I am very near the truth, and, if any thing, rather within it.

Now what results do these figures show?

First, as regards Expenditure which is the keystone of our Financial situation, I invite your attention to the salient fact that out of a total of £29,000,000 of Expenditure which was open to revision, we have, in one year, effected an actual saving of upwards of £5,000,000.

The Interest of Debt, the Home Expenditure, payments under Trustees, and the cost and charges of collecting the Revenue, are not susceptible of reduction. On the contrary, the latter charges tend necessarily to increase with the growing prosperity of the country and the increase of Revenue.

Deducting these, the aggregate of Military, Naval, and Civil Expenditure of every description was £29,465,066 in 1860-61, and £24,293,787 in 1861-62, the difference being £5,071,279.

And out of this we shall have spent fully £750,000 more on useful Public Works in 1861-62, than in the preceding year.

The larger part of this great saving is in Military Expenditure, which has been reduced from

£20,009,307 in 1859-60;
£15,838,980 in 1860-61;
to £12,800,000 in 1861-62.

This is the fruit of the measures by which the Native Armed Force, including Military Police, has been reduced in two years from 350,000 to less than 180,000 men, and the European Army, in round numbers, from 90,000 to 70,000. I cannot refrain, however, from stating publicly how much the Government of India has been indebted to Colonel Balfour and his colleagues of the Military Finance Department for the satisfactory result we have been enabled to realize.

I have pleasure also in stating my conviction that this large saving, and the further saving which I shall presently show for the ensuing year, have been attained without any sacrifice of efficiency or of the comfort of the Soldier. On the contrary, I believe that what with the improvements of modern Science in Armaments and sanatary arrangements; the increased facilities for moving Troops and supplies by Roads, Railways, and Steamers; the concentration and secure hold of all Fortresses, Arsenals, and Artillery, and the weeding out of elements of weakness and danger in the Native Army; at no moment of our previous history did our Military power in India ever stand on such a sound and secure basis as it does at the present day.

The other reductions in the current year have been £426,000 in the Navy and Marine, and about £1,500,000 in the various branches of Civil Expenditure, chiefly under the head of Miscellaneous and Contingent Expenses.

If we compare the actual Expenditure of 1861-62 not with the results of 1860-61, but with the Budget Estimate of last April, there is an increase of 1,714,370, of which £1,458,140 is accounted for under the two heads of Opium Advances and Public Works.

We shall pay £714,000 more for Opium Advances than was estimated, owing to the advance of price to the Cultivator, and large increase of Cultivation.

As regards Public Works, it was intended that £500,000 should be transferred to Local Budgets, and provided for by Local Taxation. This intention has not been carried out for a very obvious reason, viz., that new constitutions having been given to the three Presidencies, it would have been manifestly improper to anticipate the action of the Local Legislative Councils, in a matter which is so peculiarly their province.

I am as strongly as ever in favor of the principle of Local Taxation for Local objects. In fact, if this great Empire is ever to have the Roads, the Schools, the Local Police, and other instruments of Civilization, which a flourishing country ought to possess, it is simply impossible that the Imperial Government can find either the money or the management. The mere repair of the Roads, where anything like a sufficiency of good Roads has been made, is a matter altogether beyond the reach of any central *bureau*.

It is of the first importance to break through the habit of keeping everything in dependence on Calcutta, and to teach people not to look to the Government for things which they can do far better themselves.

It is, however, in entire accordance with this policy, not to force Local Taxation upon them by an Imperial Fiat, but to leave each Government, with the aid of its own Legislative Council and of its own Officers, to work out the problem in its own way, subject only to an Imperial control.

In the mean time we give as much as we can afford towards Public Works, so as to make whatever may be raised from Local sources a clear addition.

In the present year we have not only taken upon ourselves the £500,000 which was to have been provided from Local Taxes, but we have further assigned another £500,000, of which half will probably be spent in the course of the year, viz., £380,000 on account of the 1 per cent. Income Tax, and £120,000 as a special grant for Cotton Roads.

Apart from these two unforeseen causes of Expenditure, viz., Opium and Public Works, the net increase of actual Expenditure of 1861-62 over the Budget Estimate will not exceed £256,130, a result which, in a total Indian Expenditure of £36,463,000, will not be considered as inaccurate for a first attempt at a Budget.

The Revenue, on the other hand, shows an increase of £1,616,492 on the Budget Estimate.

Of this £870,000 arises from Land, including Sayer and Abkarree; £340,000 from Stamps; and £370,000 from Customs · arising in each case from the Estimates in April having been taken with too wide an allowance on the safe side.

Income Tax has yielded almost exactly the estimated amount, or £1,042,000 instead of £1,946,094.

Salt shows a decrease, which can, however, be satisfactorily shown not to have resulted from any falling-off of consumption, but from a large decrease in the stock of Duty-paid Salt

All the other branches of Revenue show continued buoyancy.

On the whole, therefore, the result is, that although we have remitted the License Tax and spent £1,458,000 more than we expected on Opium and Public Works, we arrive at April 1862 with as nearly as possible the same result as we promised in April 1861, viz., with a substantial Equilibrium, or, as the Cash Balances indicate, with a surplus of £700,000.

Now for the year 1862-63. As the simplest plan, I will begin by taking the Budget as it would stand, with no changes of Taxation, and no special additions to last year's grants for Public Works and Education.

The Revenue of 1861-62 is £42,911,090,—that of 1862-63 is estimated at £43,796,200, showing an increase of £885,110.

The most important point in this Estimate is to know how Opium has been taken.

The latest price was 1,471 Rupees per chest. I have assumed that, with the increased supply coming forward after 1st January next, prices may gradually fall to 1,000 Rupees a chest, and that, taking the year through from 1st May 1862 to 1st May 1863, we may realize, on the average, half way between that limit and the present price, or 1,237 Rupees a chest; but, to keep on the safe side, I have taken it at 1,200 Rupees.

I believe this to be a fair and moderate Estimate, especially as the price is no longer a speculative one, but is apparently based on the *bonâ fide* demand of the China Market, and has been remarkably steady for some months.

The principal heads of increase in Revenue, are, Land £100,000; Stamps, £300,000; and Public Works, £200,000 · the two latter not so much from assumed increase of receipts in 1862-63, as from finding on closer investigation that the actual receipts of 1861-62 had been greatly under-estimated. Of the increase in Land Revenue, £110,000 is a mere transfer from another head, and the remainder is mainly owing to the cessation of the Famine in the North-West and Punjaub.

The other branches of Revenue generally show buoyancy; but, wishing to keep on the safe side, I have, generally speaking, taken them at the figures indicated by the actual results of 1861-62. The general result is that the Revenue of 1862-63 would be better than that of 1861-62 by £885,100, supposing no changes to be made in existing Taxation.

The total Indian Expenditure of 1862-63 is £35,905,521, as against £36,463,309 in 1861-62, or less by £557,788, assuming for the moment no extra grants for Public Works and Education beyond those of this year.

This Expenditure may be readily analysed into two parts, as we did in comparing 1861-62 with 1860-61; the first consisting of charges beyond our control, as Interest on Debt, Home Charges, and Cost of Collection; the second of charges open to revision, like those for the Army, Navy, Police, Law and Justice, and Civil Administration.

The former class of charges amounted to £11,043,173 in 1860-61;
£12,169,522 in 1861-62;
And they will be .....£12,350,500 in 1862-63.

The main causes of increase in 1862-63 are, the extension of Opium Cultivation; of Revenue Surveys; of Post Office and Electric Telegraph charges, owing to more work and better administration; of Mint charges, owing to Copper Coinage; and of Stamps, owing to increased Revenue.

The second class of charges open to revision amounted to £29,365,066 in 1860-61; £24,293,787 in 1861-62; and £23,454,087 in 1862-63; or £839,700 better in 1862-63 than in 1861-62, which was itself £5,071,279 better than 1860-61.

The greater part of this improvement is owing to our Military Expenditure, which again shows a reduction.

The cost of the Army defrayed in India stands as follows for the last four years:—

£20,909,307 in 1859-60;
£15,838,980 in 1860-61;
£12,800,000 in 1861-62;
£12,200,000 in 1862-63.

The saving of £600,000 next year, as compared with 1861-62, is due partly to further reductions of the Native Force, and partly to the strength of the European Army having come down more nearly to the established strength.

Since the commencement of the present year the Government has ordered, in addition to the large reductions of last year, the reduction of eight Madras Native Regiments, eight Corps of Bengal Military Police, and some other reductions, which will have the effect of bringing the total Native Armed Force of every description down to about 125,000.

A still larger saving results from the absorption of European Supernumeraries.

During the year 1861 we have had, on the average, fully 4,000 European Soldiers in India above our established strength, who cannot cost, including every thing, less than £45 per head. We have had also to provide in 1861-62 for a Home Military charge almost identical with that of 1860-61.

A reduction is at length effected in this charge, and I am too happy to receive it to scrutinize closely whether it might have been made earlier.

I certainly thought that, although it would have been unreasonable to expect England to take back Regiments without notice, it was not too much to hope that when the established strength of Europeans for India had been determined upon at Home within a very narrow margin of its present amount, as long ago as the Autumn of 1860, steps might have been at once taken to stop recruiting and bring the *depôts* in England down from the excessive strength at which they had been kept for English, not Indian, objects, so that the Finances of India, then in a very critical state, might have received more effectual aid at an earlier period.

However, "all's well that ends well." We have surmounted our crisis and at length got the European Force nearly down to its established strength, and have assurances from Home that recruiting is suspended for all Regiments still in excess: I have no wish therefore to prolong controversy, and although perfectly ready to prove and justify every word I have said on the subject, I am ready, speaking for Indian Finance, to let "bye-gones be bye-gones."

At the same time I am not sorry that public opinion in England has been directed to the subject, and that the Secretary of State can now reckon, as I believe he can, on the support of influential interests, in resisting any attempts to revive the practice, so pleasing to an English Chancellor of the Exchequer, and so displeasing to an Indian one, of keeping 10,000 or 15,000 additional Soldiers in England at the charge of India.

The expense of the Navy and Marine is brought down to £472,000, or £150,000 lower than it was last year, and £576,224 lower than it stood at in 1860-61.

Other charges nearly balance each other. We save £135,000 in Police, and spend £110,000 more in the extension of Law Courts and the Administration of Justice.

Miscellaneous and Contingent Expenses are diminished, while Salaries and Superannuations are slightly increased, the cause in each case being mainly a more accurate classification

The general result is that we are better, in our voluntary Expenditure, by £839,700, and worse in our involuntary Expenditure, by £281,912, making us better in our total Indian Expenditure by £557,788.

On the balance of Home Charges and Receipts, as shown by the Estimate sent by the Secretary of State, a copy of which I lay on the table, we have £43,774 less to provide than was estimated for in 1861-62.

But, on the other hand, we have £200,000 more to provide for the excess of Railway guaranteed Interest over net traffic receipts, a result which is not surprising with such a great extent of unfinished line in course of construction.

This concludes the comparison of 1862-63 with 1861-62.

We are, in all, £1,286,662 better than in 1861-62, and as the revised accounts of that year showed a surplus of £142,021, we have a surplus in 1862-63 of £1,428,623, irrespective of the changes now to be proposed.

In the first place, we propose to give £146,453 more than will be spent this year, to Education, Science, and Art, bringing the grant for these objects up to £500,000.

This amount will not appear inconsiderable when it is recollected that it is more than England gave for Education ten years ago, and is even now in a larger proportion to our total Expenditure than the present English grant is to that of England. At the same time, it is a small sum compared with the magnitude of the field which we wish to reclaim from ignorance, and I am persuaded that no Member of this Council will grudge the money for such an object. I will not touch on the mode of applying this increased grant, for any attempt to do so

would lead me too far from the proper object of what is merely a Financial Statement.

As regards Public Works we propose to provide as follows:—This year, as I have shown, we have provided for £1,000,000 more than was estimated for in April, and have given from Imperial Revenue; 1*st*, an original grant of £3,680,000, 2*ndly*, an extra grant of £120,000; and, 3*rdly*, £380,000 on account of the 1 per cent. Income Tax.

The latter goes to the Local Governments in aid of their Local Funds, and is spent by them, subject only to our general control. They have not spent £300,000 of this money, owing to the late period at which the allotment was made, and, strictly speaking, we might postpone a second year's allotment until twelve months after the first one, and thus throw the bulk of it into 1863-64.

But we think it better to credit the Local Governments with the £300,000 standing over from 1861-62 out of the surplus Balance of that year, and credit them at once with the further £380,000 due for 1862-63. This will place the Imperial Government in advance instead of in arrear to the Local Governments under the Income Tax Act, and give those Governments an opportunity of commencing as much useful work as they can profitably undertake by the next cold season. It will give them, with their own Local Funds proper, a very large sum of upwards of £1,000,000 available for 1862-63, irrespective of Imperial assignments; but we trust to them not to hurry forward work so as to cause useless expense, especially as any portion of this local money remaining unspent at the end of the year will be carried forward as a Balance to the credit of their Local Funds, and will not affect their next year's assignment.

For the Imperial assignment which is spent under the direct control of our Public Works Department, we propose to give £200,000 beyond last year's assignment of £3,680,000.

We shall thus give in all £4,260,000 for Public Works from Imperial Revenue, and shall provide for an Expenditure from all sources, Imperial and Local of over £5,000,000 in the year, of which not above £500,000 will be for Military works.

This absorbs another £380,000 of our surplus, and, with the increased grant for Education, leaves a surplus of £903,810.

The question how to apply this surplus is one for the gravest consideration.

At all hazards we must keep clear of a recurrence of Financial embarrassments; on the other hand, investing as we do so largely in Public Works, it is not politic to keep up objectionable Taxes for the sake of retaining a further money surplus, which would only invite to extravagance.

The question is, can we, or can we not, safely apply our present surplus in relief of Taxation?

To answer this it is absolutely necessary to look beyond the present year and take a general view of Indian Finance.

In any estimate of the Financial prospects of India, Opium necessarily demands our first consideration. We are deriving a net Income of £4,000,000

a year from this source, and if, as is sometimes asserted, this Income is altogether precarious, our position is still one of great hazard.

I have thought it right, therefore, to take every means in my power of thoroughly satisfying myself on this head, before I ventured to propose any reductions of existing Revenue.

The result is, that I can see no reason why the Revenue derived by India from Opium should be considered more precarious than that derived by England from Gin or Tobacco.

I believe the cry of the precariousness of the Opium Revenue has originated, very much from the strong aversion felt to it in certain quarters on moral grounds.

This is not the place to go into any lengthened argument as to the moral bearings of the question. I have heard the most contradictory opinions advanced, in perfect good faith, by respectable men who had been in China, some denouncing Opium as a deliberate poisoning of the Chinese for the sake of filthy lucre, others contending that it had produced a most beneficial effect by substituting a comparatively tranquil stimulus for the wilder excitement of intoxicating drinks, which led to bloodshed and crimes of violence.

My own belief is that the truth lies between the two extremes, and that Opium is neither very much better, nor very much worse, than Gin.

This much seems certain in speculating on the probable continuance of a demand for Opium in China. Every civilized or semi-civilized race of mankind seems to affect some peculiar form of nervous stimulant, and as the Natives of Northern Europe take to Alcohol, so the Chinese take to Opium. Possibly, in each case, the craving is for something to supply an innate want. The Englishman, the Dane, the German, and the Russian, resort to that, the specific effect of which is to raise the spirits, and produce temporary exhilaration.

The Chinese, whose greatest deficiency, as shown by the whole history, religion, and literature of the race, is in the imaginative faculties, resorts to that which stimulates the imagination and makes his sluggish brain see visions and dream dreams.

Be this as it may, the fact is certain, that under all circumstances and in all climates, as the Englishman is a drinker of Beer, so is the Chinaman a smoker of Opium.

We have, therefore, at the bottom of our Opium Revenue, one of those great natural instincts of a large population upon which English Chancellors of the Exchequer confidently rely for half their Revenue.

It is, of course, theoretically possible, in the case of Gin, Whiskey, Rum, and Tobacco, that the exhortations of the Temperance advocates in the former case, and of the Ladies in the latter, might, at any moment, so far prevail, as to induce the population generally to abstain from habits which are in many cases pernicious, and in many more wasteful and disagreeable.

Should they so prevail, the Finances of England, and, indeed, of almost every country of the civilized world, would collapse far more suddenly and hopelessly than ours would in India by the failure of Opium.

But, as I have said, an English Chancellor of the Exchequer goes on with equanimity, relying on a taxation of 400 or 500 per cent. *ad valorem* on Spirits and Tobacco for £20,000,000 of his Revenue, and while this is the case, I can see nothing in any general considerations as to Opium, to prevent us from doing the same.

The question is altogether a specific one of selling price and cost of production. Is there anything in the actual condition of our Opium Revenue, to render precarious the continuance of that which has gone on steadily growing for the last ten or fifteen years?

With the short supply and excessive prices of the last two years, no doubt this was the case.

We were not in the least degree weaning the Chinese from the use of Opium, but we were stimulating the production of a Native article, which, although inferior in quality, was fast entering into competition with us.

But the question is not one of maintaining a price of 2,000 or even 1,500 Rupees a chest for Indian Opium.

Measures have already been taken which will increase the average production of Bengal Opium to about 50,000 chests a year, while that of Malwa exceeds 40,000, and the question is, at what price is China likely to take this quantity off our hands?

On referring to the Returns of the last ten years, I find the following results as to the supply of Indian Opium exported to China each year, the average price, and the approximate amount which China has paid to India each year for Opium.

Year.	No. of Chests.			Average price of Calcutta Sales.	Approximate sum paid for Opium by China
	Bengal.	Malwa.	Total.		
				Rs.	£
1852-53	35,521	27,111	62,632	1,104	6,900,000
1853-54	42,403	28,473	70,876	887	6,200,000
1854-55	49,979	24,672	74,651	711	5,250,000
1855-56	49,399	25,999	75,398	834	6,225,000
1856-57	42,272	29,589	71,861	891	6,300,000
1857-58	40,128	39,797	79,925	1,285	10,240,000
1858-59	30,871	42,000	72,871	1,487	10,500,000
1859-60	25,253	44,002	69,255	1,675	11,600,000
1860-61	21,263	40,703	61,966	1,921	11,750,000
1861-62	24,063	36,000	70,063	1,600	11,200,000
Average of first five years, 1852-57	.....	.....	71,083	885	6,120,000
Average of second five years, 1857-62	.....	.....	70,600	1,593	11,000,000

This Table shows that, notwithstanding great fluctuations of price and of supply from year to year, the Opium trade with China is amenable to certain general laws.

There has been a progressively increasing demand, which, being met by a stationary supply of about 70,000 chests a year, has, in ten years, nearly doubled the price, and called into existence a supplemental Native supply, estimated by those acquainted with the trade, at from 20,000 to 30,000 chests, selling at perhaps two-thirds of the price of Indian Opium.

There is conclusive evidence, therefore, that as matters stand, China requires every year a supply of 100,000 chests of Opium, and is prepared to spend from £12,000,000 to £15,000,000 on the article.

When I say China, I mean that part of the vast Empire with which we have commercial relations, for of the interior we know very little. It is probably supplied largely by Native Opium, as the late Expedition saw an extensive Poppy cultivation above Hong-Kow.

Now to maintain our existing Revenue, all we require is, not to maintain existing prices, but that China shall, one year with another, take from us either 80,000 chests at 1,000 Rupees a chest, or 100,000 chests at 800 Rupees a chest. We can produce Opium in Bengal, even with the present high price to the Cultivator, at 400 Rupees a chest, and experience has proved that with a Pass Duty of 400 Rupees a chest, Malwa Opium admits of rapid extension.

In fact, the cultivation of Opium is so profitable to the Ryot, and so popular, that we can get almost any quantity we like at those prices, especially in our own territories, where the profit to the Cultivator is not curtailed by excessive land assessments, transit duties, profits to middlemen, and usurious interest on advances.

This year our net Revenue from Opium is at a low point, for we are paying a high price for double the production which we are bringing into the market.

Our gross receipts are about £6,000,000, but we are paying, not £1,000,000, which would suffice for the quantity we have to sell this year, but £2,000,000, for the crop which will only come into the market next year.

The conclusion, therefore, is irresistible, that there is no risk of our actual Opium Revenue diminishing, unless the demand in China should so far fall off as to be unable to spend £8,000,000 a year on Indian Opium; while this year, and for the average of the last five years, they have been spending £11,000,000.

Should they continue to spend £11,000,000, our net Revenue from Opium must infallibly improve, and if, as some think, Indian Opium, if it could be sold at about 450 Dollars a chest in China, would almost supersede the Native article; there is really no limit to the progressive increase of Revenue from this source. I think myself, viewing the matter as dispassionately as I can, that the probabilities are rather in favor of an increase than a decrease of Opium Revenue for the next few years, but I am satisfied if I have established that the existing Revenue

is not more precarious than any other Revenue depending on a widely diffused artificial taste among a vast population.

This being so, I proceed to examine what are the prospects of the other great branches of Indian Revenue, and here the result is most satisfactory.

The total Revenue of India, ten years ago, was £29,210,000,—it is now £43,750,000.

The average Revenue of the three years before the Mutiny, or 1854-55 to 1856-57, was £31,980,000,—that of the three years, 1860-61 to 1862-63, is £43,203,000.

We have therefore an increase of £14,500,000 a year in ten years, and of £11,000,000 a year in five years.

Of this increase not quite £1,500,000 is due to Opium, and about £5,000,000 to new Taxes—as the Income Tax, and enhanced Duties on Salt, Stamps, and Customs. Another £1,000,000 may be due to acquisitions of Territory.

There remains, therefore, an increase of £7,000,000 in ten years, or of £4,500,000 in five years, which is due solely to the elasticity of existing Revenue:—Land, for instance, including Sayer and Abkarree and Salt, irrespective of enhanced Duty, have each risen upwards of £2,000,000 in the last five or six years.

It is an incontrovertible fact, therefore that the progressive increase of ordinary Indian Revenue has averaged £700,000 a year, each year, for the last ten years, and that the tendency of this rate is to increase rather than diminish. Nor can it be doubted that if, during this period, £5,000,000 a year had not been added by new Taxation, the increase of the old Taxes must have been somewhat greater.

I confess that I was hardly prepared myself for this result.

I came out here under the impression of the gloomy and almost despairing views of Indian Finance which were universally prevalent a year ago, and it is only by degrees, and is the result of close enquiry, that the conviction has forced itself on my mind, that the Revenue of India is really buoyant and elastic in an extraordinary degree.

I know of no other country of which it can be said that her ordinary Revenue is increasing by £750,000 a year, while her Expenditure has, in one year, been reduced by £4,000,000; and that she is maintaining an equilibrium, while expending out of Revenue upwards of £4,000,000 a year on Public Works, and another, £1,000,000 for Interest on unfinished Railways.

Nor can I see any reason, looking to the future, why, if by the blessing of Providence peace be maintained, this prosperity should not go on increasing. On the contrary, we are apparently commencing a period when, by the opening of Communications, the improvement of Agriculture, the extension of Commerce, and the tranquillity resulting from a strong Government directing all its energies

to peaceful pursuits, India will enter on a career of material prosperity hitherto unexampled.

Without speculating, however on any such future advance, it is enough to say that, under existing circumstances, the Government feel justified in dealing with any surplus shown by the Estimates, as a *bonâ fide* surplus available for improvements or remissions; and that they do not think it would be good policy to maintain in addition to the large Expenditure on Public Works which is really a sinking fund admirably invested, a further Cash Surplus against remote contingencies, which would only be a temptation, both here and at Home, to relapse into extravagance.

There is one objection, however, to any reduction of existing Taxes, which I am anxious to meet, in order to show that the Government is not acting without a full consideration of all circumstances.

It is this, that a war or some unforeseen event may suddenly cause increased Expenditure, and that it is imprudent to part with any established Tax, which, in such a case, might be needed.

I quite agree that it is wrong for a Government to speculate on Financial prosperity, and to leave itself bare of resources in case of difficulty.

But what are our Reserves, and how should we be prepared to face a crisis if it arose?

In the first place, we have got, and if prudent shall always keep, a very large Cash Balance beyond our immediate wants.

Under the old system a Cash Balance of £10,000,000 has sufficed, and with Railways, an improved Currency, and arrangements with Banks, we could carry on the ordinary business of the Government with perfect ease, with a Balance of £7,000,000 or £8,000,000.

Now we have actually got over £17,000,000, and, after allowing for all liabilities to the Home Government or otherwise, fully £14,000,000 of this is our own undoubted property. We could, therefore, in case of need, get over two or three little wars, or the first year of a great war, without either Loans or new Taxes, and I earnestly trust that no Government of India will ever leave itself without this, which is the first and best of all Reserves, an available £3,000,000 or £4,000,000 in hard cash, on which it can lay its hands at any moment.

Beyond this the credit of a Government is its Reserve, and if, by two or three years of tranquillity, we raise our Funds to a comparatively high level, as we infallibly shall do, our money power, in case of an emergency, is proportionately increased.

And if driven to resort to increased Taxation, it would be easy, with the experience of the Income Tax, to frame a measure, partly Poll Tax, and partly License Tax, to produce £1,500,000 or £2,000,000 a year. The Duty on Salt could also be raised, and, in case of need, the Customs Duties again increased, so that probably £3,000,000 or £4,000,000 a year could, at any moment, be raised by new Taxation, which would be submitted to readily, as the country had learned

from experience to trust the assurances of the Government that war-taxes would be repealed with the return of peace.

Moreover, at least £2,000,000 a year of our Expenditure on Public Works is optional, and could be suspended in an emergency.

I trust we may never be driven to such a measure, but the Reserve is not the less there, if needed, and I know of no other State, not even England, which possesses such a Reserve to the same extent.

I hope, therefore, I have satisfied the Council that the Government has not been unmindful of the maxim, "*si vis pacem para bellum*," and that whatever reductions we propose may be accepted with a safe conscience.

I have now established two points:—

First.—That we have a surplus for the ensuing year of £903,814, after allowing for additional grants for Public Works and Education.

Secondly.—That there is nothing in the general circumstances of Indian Finance which should make us hesitate to use this surplus for purposes of remission.

I have dwelt upon the second point at a length which must, I fear, have wearied the Council, but many watch these statements with interest, and it is important, both for myself personally, as I may not have another opportunity of expressing my general views respecting Indian Finance, and, what is of far more consequence, it is important for the credit of the Government, to show that in proposing to remit Taxes, in little more than twelve months after we were supposed to be in a state of hopeless insolvency, we are not acting on a spasmodic impulse, but on a comprehensive and deliberate review of the whole circumstances of our position.

I proceed to state, what is of more immediate interest, how the Government propose to deal with this surplus of £900,000.

Three Taxes were proposed as special measures to meet the late Financial crisis; the Income Tax, the License Tax, and the enhanced Customs Duties on Manufactured Goods.

Of these the two former pressed directly on the Native population and European residents of India, while the latter pressed mainly on English interests, and on the operations of Commerce.

The License Tax, which would have affected 5,000,000 of Native Traders, Artizans, and Mechanics, representing, with their families, a population of not less than 20,000,000, has been arrested after it had become law.

Even if the produce of the two remaining Imposts had been the same, so that it had been equally easy to repeal the Income Tax, or the enhanced Import Duties on Manufactures, the claim of Commerce to the next share of remission might have been urged with some plausibility.

But, in fact, there is no such choice, for one is possible, and the other impossible. The Income Tax produces £1,800,000, while the enhanced Duty on Piece Goods and Yarns produces less than £500,000. At the rate of importation for

the last nine months, the difference between a 10 per cent. and a 5 per cent. Duty on Piece Goods for all India is not quite £430,000 a year.

This being the case, the time has evidently arrived when the extra Duty imposed to meet an emergency should be remitted, unless we are prepared to retain it as part of our regular Financial system.

Some think this ought to be done, and no less an authority than His Honor the Lieutenant-Governor of Bengal has recorded an opinion, that a 10 per cent. Duty on imported Manufactures is "one of the most legitimate sources of Revenue we have."

The Government, however, are of a different opinion for two very plain and obvious reasons.

Firstly, the Duty applies almost exclusively to British Manufactures. Now, as long as England and India remain parts of our great Empire, it is impossible to apply precisely the same rules as if they were separate and independent countries. I have opposed, as stoutly as any one, any attempt to ease English Finance unduly at the expense of India; but I cannot deny that England, having founded the Indian Empire, and being ready to sustain it, and having given up all pretensions to exact a tribute, as Holland does from Java, or Spain from Cuba, and all claim on a monopoly of the Indian Market and carrying trade, may, with some reason, ask India so to levy the necessary Revenue as not to interfere injuriously with trade between the two countries.

In fact, so completely has England given up those claims which other countries have enforced on their dependencies, that speculative reasoners have even argued that the parent State would be better without its Foreign and Colonial Empire.

That is an opinion which no practical Statesman will for a moment entertain; but it cannot be denied that, apart from moral and political considerations, the extension of Commerce is the most direct and palpable advantage derived by England from the possession of India.

A heavy Import Duty, therefore, on trade between England and India, comes very near in principle to a Transit Duty between different parts of the same Empire, and what is more important than any theory, it is a Tax which, in practice, is not likely to be permanently maintained.

To those who argue this point on abstract grounds, and overlook the practical considerations arising from our actual position with regard to England, I would simply put two questions.—Do you believe that if Ireland found it more convenient to tax Manchester Goods than to levy a poor rate, she would be allowed to do so; or do you believe that if it were found that 25 per cent. would give India a better Revenue than 10 per cent., we could raise the Duty to that amount with the slightest chance of retaining it?

But, secondly, there is another argument, even more conclusive, against the permanent retention of a 10 per cent. Duty.

Either the clothing of the people is a proper subject for taxation, or it is not. If it be so, on what possible principle can we impose a considerable Duty on clothing which comes from abroad, and levy no Duty at all on clothing produced at Home?

It is the old question of the Corn Laws over again.

Free-trade does not mean that there shall be no Taxes, but that Taxes shall be levied solely with a view to Revenue, and not partly for Revenue and partly for protection.

That every Customs Duty on an imported article should have a corresponding Excise Duty on similar articles produced at Home, has therefore become an axiom, and it only admits of one exception, where the amount of Import Duty is so moderate that it does not seriously affect trade, while it makes it obviously inexpedient to establish an Excise machinery for the sake of levying a trifling Duty.

This is the case with regard to Corn in England, where a Duty of 1*s.* a quarter, equal to 5 per cent. on the cheaper sorts of Foreign Grain, is retained, and it is precisely our case with regard to Piece Goods.

We cannot dispense with Customs Duties on our Imports generally, and while this is the case, no reasonable man can object to our retaining an old accustomed Duty of 5 per cent. on Manufactured Goods; but when this is raised to 10 per cent., which, in effect, may often amount to 15 or 20 per cent. on the cost price of the article at Home, no one who is not prepared to abjure the principles of Free-trade can deny, that this is a rate which, if it is to be maintained, requires us at once to impose a countervailing Excise Duty on every loom in India.

The Government do not think that this would be desirable.

We do not wish to discourage Manufactures in India. On the contrary, I believe there are many Manufactures in which India is calculated to excel.

With cheap raw material, cheap labor, and many classes of the Native population patient, ingenious, and endowed with a fine touch and delicate organization, I see no reason why the interchange between India and Europe should be confined to Agricultural produce against Manufactures, and why, in course of time, Manufactures of certain descriptions where India has a natural advantage, may not enter largely into her staple Exports.

But because I desire to see this, I am the more anxious not to bestow on Indian Manufactures the fatal boon of a temporary and precarious protection.

Whatever step they make forward in fair competition with Manchester will be a solid and substantial advance, but they will never thrive while the progress of one year creates the panic of the next, by changes, or rumours of changes, in a protective Duty of so high an amount as necessarily to form a vital element in all their calculations.

I may add this, that although the benefit to India, generally, from a reduction of this Import Duty is not so palpable and immediate as from the remission of a direct Tax, it is not the less real.

There can be no question that the population of India are, on the whole, insufficiently clothed, and that whatever may be the case under the temporary conditions of an over-stocked market, an extra Duty of 5 per cent. on imported cotton clothing, does, in the long run, raise the price of all cotton clothing in India to the consumer, to a level higher by one Rupee in every 20 than it would have stood at otherwise.

It is certain also that the Export Trade, on which so much of the prosperity of India depends, depends itself very much on the Import Trade. The more we take from England, the more will England take from us; and a cessation of Imports would soon translate itself into a reduced price to the Ryot for his Oil-Seeds, his Cotton, and his Jute.

This is especially important at a time when India is hoping to secure the largest share of a trade of £20,000,000 a year in Raw Cotton, thrown suddenly open by the failure of the American supply.

For these reasons the Government of India has determined to reduce the Import Duties on Piece Goods and Yarns to the old rates of 5 and 3½ per cent. respectively.

The question arises, when this reduction should take place.

All public interests point to its being immediate. Trade must be paralyzed to a great extent by a prospective reduction, and if, for a period of several months, purchasers hold back and stocks accumulate in Bond, there is every reason to apprehend a greater fall of price than could possibly be caused by an immediate reduction.

This could only be met by fixing a very distant period for the reduction, but I confess that, in the present state of things in Lancashire, I should be very unwilling to postpone, for a single day, any benefit they may get from this reduction.

The only argument I know of for delaying the reduction is, that there are large stocks of Duty-paid Goods.

Now I must say the holders of such Goods have had fair warning. I have repeatedly stated in public, in the course of the last year, that the Government of India did not consider the 10 per cent. Duty as a permanent one, and in reducing the Duty on Yarn twelve months ago, we gave a practical proof of our intention to reduce the Duty on Piece Goods at the first possible moment. The state of the Cash Balances has shown for months past that such a result was possible, and, since the remission of the License Tax, no one could doubt that it was highly probable, or rather, almost certain.

Throughout this period we received Memorials from the Chambers of Commerce of Calcutta, Bombay, and Madras, urging reduction, and either expressly deprecating delay, or making no allusion to it.

It is only at the last moment that Memorials have been received from a few highly respectable Firms at Calcutta and Bombay, asking that the reduction should be postponed for a long period, or, in the latter case, I may say indefi-

nitely, until the state of the Market is changed. Other Firms in Calcutta have sent a counter-Memorial for immediate reduction.

It appears, therefore, that opinions here are divided, and that the opinion in favor of delay is apparently not a very clear and decided one, or it would never have left itself to be expressed as an after-thought at the last moment. Moreover, it is apparently confined to Merchants who might have bonded, but who preferred paying Duty, and who, therefore, probably were on the right side when the Duty was raised three years ago.

And what is more material, the Merchants and Manufacturers in England, who, I apprehend, would generally bear the loss if there is a fall of price consequent on the reduction, which I do not expect, have not only not asked for delay, but have pressed most earnestly in all the reports I have seen of their proceedings for an immediate reduction of the whole 10 per cent.

Under these circumstances, the Government see no sufficient reason to depart from the usual and accustomed course in such cases, which is clearly best for the interests of the public; and I accordingly propose that the reduction of the Duty shall take effect from the passing of the Act on Wednesday next.

Under ordinary circumstances, I should expect a large part of the loss to be recovered from increased importation; but, with the market still over-stocked and the price of Raw Cotton extremely high, I do not calculate on any improvement for the ensuing year, though I have no doubt that, with the first favorable change in the trade, a large portion of the loss will be recovered.

The same arguments for reduction as in the case of Piece Goods, do not, apply to other articles of the Tariff which are not extensively produced in India as well as imported. A moderate Duty, such as 10 per cent., on such articles, is not an objectionable mode of raising Revenue. There are, however, a few articles in the Tariff where relief is required, and may be given at a trifling cost to the Revenue.

Paper is taxed 10 per cent. on its value, and yields little more than £10,000 a year. Now I am not going to enter on the large question, which for two years agitated the British Parliament, whether a Tax on Paper is so obnoxious as a Tax on Knowledge, that it ought to be repealed even at the risk of creating a deficit. It is enough to say, that a Duty on the raw material, "Paper," is indefensible, while the manufactured article, "Books," are admitted free, and that practically cases have arisen where, owing to this anomaly, it has been cheaper to send Manuscripts of works intended for Indian circulation to be printed in England than to print them here. We do not propose to tax Books, and therefore we place Paper on the free list.

I may add that, though I should not have been prepared to give up a large existing Revenue from Paper without a clear surplus, I have real pleasure in finding that the state of things in India enables us to give any contribution,

however trifling, towards cheapening the cost of an article which enters so largely into the Statistics of Elementary Education, and of the diffusion of knowledge, through the Press.

I pass to a very different subject, that of Beer.

The Duty before 1859 was 5 per cent. *ad valorem*; it has since been 4 annas per gallon, which, I find, has averaged nearly 20 per cent. on the value of the Beer imported. The importation has greatly fallen off, and though this may be attributed mainly to the excessive importation of 1859, which glutted the market, still it cannot be denied, that a Duty of nearly 20 per cent. is excessive, and calculated to check seriously the importation of an Article which, in this climate, is to many European constitutions almost a necessary.

Accordingly, I propose to reduce the Duty by one-half, or to 2 annas per gallon, and here again I feel a very disinterested pleasure,—for I am no Beer-drinker myself.—in being able to propose any boon, however slight, to the class who have perhaps suffered more than any other from recent Taxation, that of Europeans residing in India.

The reduction at the present rate of Imports will not cost above £10,000 a year.

From Beer to Tobacco the transition is easy and natural.

The Duty on Tobacco is so absurdly high, that it is clear we are driving all but the superior sorts out of the market, and losing Revenue. The Duty of 1 Rupee per seer is fully 100 per cent. on ordinary American Tobacco, and its effect has been to reduce the importation in three years from 1,200,000 lbs. to about 360,000 lbs., a striking proof of the impolicy of excessive Import Duties. I propose to reduce the Duty to 20 per cent. *ad valorem*, which I have no doubt will cause a slight gain rather than a loss to the Revenue.

The Duty on light Wines is also so high as to be almost prohibitory as regards the cheaper descriptions. I propose to reduce it from 2 Rupees to 1 Rupee per gallon, in the case of light Wines declared of less value than 12 Rupees per dozen.

There are some other slight reforms in the Tariff which do not appreciably affect Revenue, and are made with a view to correct anomalies.

For instance, there is an Export Duty of 3 per cent. on Coals and Iron the produce of India. This is as yet of no great practical importance, but it is manifestly wrong that a cargo of Raneegunge Coal should be burdened with an Export Duty, if shipped to Ceylon or Java, to compete with Coal from England.

There can be no reason why Carriages should be imported free, while all the chief materials used in Carriage making pay an Import Duty.

These, however, and any other minor matters, can be dealt with in Committee on the Customs Bill, and for the present it is enough to state, that the total effect of the reductions proposed in Customs Duties may be taken at £475,000 for the ensuing year.

This reduces my surplus to £428,814.

One question only now remains for consideration, viz., how to deal with the Income Tax.

Some action is requisite, for the Act of last year, continuing the first year's assessments, will soon expire, and it is necessary to provide before August, whether the Notices and Forms of Return prescribed by the original Act shall or shall not be again issued.

Upon this point, there is, I believe, no second opinion among men practically acquainted with India, that they ought not to issue. It is admitted on all hands that the alarm, the vexation, the oppression, and the extortion, inseparable from calling for complicated Returns of individual Incomes, in a country like India, are a far greater evil than the Tax itself, and that, assuming such a Tax to be indispensable, a rough classification at fixed rates, somewhat on the plan proposed by my Hon'ble friend Mr. Harington, would have been infinitely preferable to any attempt to ascertain individual Incomes.

Accordingly, I had thought last year, when it seemed certain that both an Income Tax and a License Tax would be required to maintain an equilibrium, that the opportunity of passing the License Tax Act should be taken to mould the two together into one measure on the principle of a fixed classification.

Circumstances led, during my absence, to the License Tax being passed in the form originally proposed, and a temporary Act was passed continuing the existing assessments under the Income Tax for one year.

Since then, Financial prospects have materially improved, and we have been able to arrest the License Tax on the very eve of its imposition, thus saving 5,000,000 of tax-payers from the incidence of a direct Tax, and the annoyance of classification.

The situation of matters with regard to the Income Tax is thus materially changed. If we were now imposing it for the first time, or if it were clear that it would be permanent, I should have no hesitation in recommending that it should be commuted into a Tax on the principle of Mr Harington's Bill, and probably made over to the local Governments to deal with on this principle, according to their own local circumstances and for their own local requirements.

A proposal of this sort has been made by the Government of Bombay, and it has much to recommend it.

It is most desirable to break through the system of barren uniformity and pedantic centralization which have tended in times past to reduce all India to dependance on the *bureaux* of Calcutta, and to give to Local Governments the power and the responsibility of managing their own local affairs.

The great branches of the Expenditure, such as the Army and National Debt, are Imperial, and while this is the case, the great branches of Revenue must remain Imperial also.

But there is a wide field, both of Revenue and Expenditure, which is properly local, which in England is met by local rates, and which, in fact, must be met locally, or not at all.

I hail, therefore, every proposal which shows signs of independance and self-reliance, and if the Income Tax were to be perpetual, I would much rather see it transferred into a local Tax, than continued as an Imperial Tax.

But before acting on this view, there is one paramount consideration which has to be weighed, viz., whether the Income Tax is to be looked upon as a permanent or a temporary measure.

Upon this point I have myself no doubt. The Tax was imposed for a limited term, and at all hazards we must strive to keep faith with the people of India by not prolonging it.

It is, of course, impossible to give any absolute pledge as to what may occur three years hence. Necessity knows no law, and unforeseen events may upset all calculations. But the question is, are we to look on the implied pledge given by passing the Income Tax Act for five years only, as a serious promise which we must strain every nerve to fulfil, or are we to follow the example of England, and treat it as one of those common forms which, like "lover's vows," are only made to be broken.

It is my firm conviction that the latter course would be alike wrong and impolitic.

The people of England can understand that whatever a Chancellor of the Exchequer may say to round a period, or elicit a cheer, the Income Tax cannot be repealed unless they are prepared either to abdicate the position of a first-rate power by disarming, or to retrace the steps of Sir Robert Peel's legislation, by imposing crushing Duties on Commerce and Consumption.

But the people of India see no such reasons for continuing the Indian Income Tax, and they would simply feel that the Government having got the Tax on false pretences, was determined to keep it.

Now, if there is one thing more than another on which our Indian Empire is based, it is on our character for speaking truth. The idea that "the word of the British Government is as good as its bond," is the keystone of the fabric of our power in the East.

Measures which, like the famous conversion of the 4 per cents., cast even a plausible suspicion on the character of the Government for straightforward and open honesty in its Financial dealings with its subjects, are, above all others, to be deprecated.

Hence, without in any way pledging the Government as to what may or may not be possible three years hence, I venture to say this—that in my judgment the main object to which the Financial policy of the Government should now be directed, is to keep faith with India by getting rid of the Income Tax. That will be the great object of my endeavors as long as I continue responsible for Indian Finance, and when I leave, it is the legacy I should wish to leave to my successor.

I will say also that, although it is impossible to anticipate what the future may have in store, there is, as matters now stand, every fair and reasonable proba-

bility that we may in three years or sooner be able to dispense with the Income Tax. If for three years the Revenue increases at the average rate of the last ten years, and if the Expenditure be kept within its present bounds, the object would be easily attained.

In the meantime, although with a remaining surplus of less than half a million, it is manifestly impossible for us to make any large present reduction of the Income Tax, there are certain measures which the Government propose, in the hope that they will afford a most material alleviation of its pressure.

In the first place, we propose to renew for the next three years the temporary Act of last year, dispensing with all further Returns and enquiries, and to take the first year's assessment for the remainder of the Tax, unless in cases of fraud or manifest inadequacy, or where the party assessed himself wishes to re-open the question.

We add a provision, that parties who desire it may pay up once for all their remaining assessments.

The vexation and oppression incidental to calling for fresh Returns, and renewing each year an inquisitorial enquiry, are thus, we hope, completely obviated.

There is, however, a still greater and more beneficial change which we propose to make. We find on enquiry that the number of persons who pay the lower rate of 2 per cent. on Incomes between 200 and 500 Rupees a year, amounts to nearly two-thirds of the whole who pay the Tax, while the money they pay is not above one-fifth of its whole proceeds.

In other words, between 500,000 and 600,000 persons are taxed to produce a gross Revenue of not more than £350,000.

I do not put the case for the exemption of these persons on the ground that they are poor, for I have no sympathy with the Socialist legislation which would place taxation exclusively on the rich. On the contrary, I believe that poor as well as rich, and often even more than rich, are interested in the support of the State and the maintenance of social order, and that the middle and working classes are those who, in the long run, suffer most from the seductions of political demagogues and from the sickly sentimentality of injudicious philanthropists.

But in the present instance there are very different grounds on which to justify the exemption of the class in question.

The cost of collecting the Income Tax was last year £160,934, and of this by far the greater part is due to the numerous class of small payers. With the number of payers reduced to one-third, and existing assessments continued, nearly the whole extra establishment may be dispensed with, and I am quite within the mark in saying that we shall save at least £100,000.

Now a Tax which affects 600,000 persons, to produce £350,000 gross, of which at least £100,000 is absorbed by cost of collection, is condemned by the mere statement of figures.

Nor is this all, for I much fear the large cost of collection must be taken as an index to a large amount of annoyance and oppression. The mere numbers

show that two-thirds of the objections to the Income Tax will be got rid of by relieving two-thirds of the Tax-payers.

But the numbers alone do not adequately represent the real relief, for it is beyond all question that men of property and intelligence can defend themselves against mistakes or attempts at extortion by Native officials, far better than the classes who just come within the limit of the 2 per cent. assessment.

This alone is a conclusive argument against any attempt to substitute for a total repeal of the 2 per cent. Tax, a partial relief to all Income-Tax payers by a reduction from 4 to 3 per cent. in the rate of payment.

We could barely afford a reduction of 1 per cent. all round, by maintaining some of the most objectionable Import Duties, and such a reduction would not in the slightest degree diminish the cost of collection, or the annoyance and oppression incidental to it.

I know that the Tax presses unduly upon many who pay their full 4 per cent. on an honest account of their Incomes, while others escape.

But those are classes to whose intelligence and public spirit we may confidently appeal. We have endeavored to deal frankly with them for some time past in all matters of Financial policy, and our reward for so doing is, that on an occasion like this, we are able to take them as it were into our confidence, and explain to them without disguise our real position.

I do not believe in "ignorant impatience of Taxation" on the part of educated gentlemen, like the great majority of the Official and Non-Official Europeans in India, when they are fairly dealt with. On the contrary, I am convinced that however strongly they may feel the natural desire of every body to escape his own peculiar burden, they will be satisfied with the assurance that the Government is sincerely desirous not to perpetuate the Income Tax, and with the pledge given for the future by the remissions already made.

The prosperity of India is their prosperity, and I am much mistaken in their intelligence and right feeling if they are disposed to use the dog-in-the-manger argument, that because we cannot afford to relieve them, 600,000 of our fellow-subjects of the humbler classes shall, for the sake of £250,000, which we do not want, be kept under the bondage of an unpopular Tax.

At any rate, such is not the decision of one class, who will continue to pay the full Income Tax, viz., His Excellency the Governor-General and the Members of the Supreme Council; and we therefore propose that from August next, *i. e.*, from the termination of the 2nd year of the Income Tax, assessments on Incomes under 500 Rupees a year shall cease, collections for the present year being of course completed.

I estimate the cost of this great boon at £250,000, *i. e.*, I shall lose £350,000 of Revenue, and gain £100,000 in Expenditure. This reduces my surplus to £179,814, which is as low as it is prudent to go; nor, indeed, should I have ventured to go so low, but for the fact that we are already investing such a large surplus in Public Works.

The estimate of Cash requirements shows, that we may expect to arrive at the 30th April 1863 with a Cash Balance of £17,050,673, after setting apart all we shall owe England in the transactions of the year.

I have endeavored to make this latter estimate more intelligible than it has hitherto been. It is the estimate of Cash transactions of the year as distinguished from Revenue and Expenditure.

A man who is a Trustee for others, or who is borrowing and paying off Capital for improving his Estates, will have Cash transactions in the course of the year very different from his Current Income and Expenditure.

So it is with us; we have receipts and disbursements on various Deposit Accounts, for Service Funds, Suitor's Funds, and otherwise, which are classed under the general head of "Debt." Our receipts in 1862-63 under this head will be £11,053,360; our payments £11,799,150; the excess of £745,790 showing that we shall have diminished our outstanding liabilities to that extent principally by the payment of all remaining instalments of Prize-money.

The other entries in the estimate are adjustments, between India and England, of sums paid here and received there, as for Railway construction, or *vice versâ*, and a final entry is made of the remittance which, according to the estimate received from Home, is necessary, after these adjustments, to discharge all the remaining liabilities of India to England, on account of Home Expenditure for the year 1862-63.

This amounts to £3,727,732, viz., £2,200,000 for guaranteed Railway Interest, and a balance of £1,527,732 in General Account.

The result leaves an estimated Cash Balance of £17,050,673 on the 30th April 1863, which will exist in actual Rupees and be entirely our own, subject, as far as I am aware, to no extraneous claims or liabilities whatever.

It only remains now briefly to sum up the results which I have endeavored to convey to the Council in this necessarily long Statement.

The year 1860-61 closed a long series of deficits with one still estimated at £6,000,000, and which in reality was upwards of £4,000,000.

1861-62 sees this deficit extinguished by a reduction of £5,000,000 of Expenditure effected within twelve months in a total Expenditure of £29,000,000 open to revision.

Further reductions and continued buoyancy of Revenue find us in 1862-63, notwithstanding the remission of the License Tax, and a large increase of outlay on Opium and Public Works, with a surplus of £1,428,623.

We apply this surplus,—

First—In further augmenting by £524,813, the grants for Public Works and Education.

Secondly.—In reducing to the normal rate the exceptional Import Duties imposed on Manufactures.

Thirdly.—In relieving two-thirds of the payers of Income Tax from all further assessments.

We close the year 1861-62 with a Cash Balance of £17,690,000. We have every reason to believe that our estimates are on the safe side, and that we shall close the year 1862-63 with a Balance of more than £17,000,000.

This is the simple state of facts laid before you without exaggeration or embellishment.

There is no doubt that it contrasts favorably with the Financial Statements which India has been accustomed to receive, and with those which other great Empires of the civilized world have been recently making.

Let us not be too confident in this prosperity, or relax that wise economy which has been the principal means of effecting so beneficial a change.

And, above all, let us not forget, that, while thankful to the Almighty Ruler of events for giving us peace and tranquillity and this foretaste of material prosperity, we shall best merit the continuance of these blessings by using them as means for higher ends, for the diffusion of civilization, the moral and intellectual elevation of our people, and all that goes to the mighty task of building up solidly and securely the foundations of a great and enduring Empire.

It is, I trust, a happy augury, that as our late Viceroy was able to close his career in India by relieving 5,000,000 of Her Majesty's Indian subjects from the imposition of the License Tax, His Excellency the present Governor-General is enabled to inaugurate his Government by relieving two-thirds of the Income Tax-payers, and reducing Duties which press on the Commerce of India with the mother country.

I closed my Statement last year with the expression of a confident hope, that India might become the brightest jewel of the British Crown.

I close it now with a still more confident expression of the same hope, and with a feeling that the twelve-months have not elapsed without something being done towards its realization.

The Hon'ble Mr. Cowie said that, as an unofficial Member, he felt it to be his duty to express the gratification with which he had listened to the Statement which had just been made, respecting the Surplus Revenue and the objects to which it was to be devoted. To the high Duties on Imports he had always objected as wholly indefensible, except upon the ground of necessity, and he regarded their reduction as a simple act of justice, quite irrespectively of any pressure from Manchester or any other quarter. He also cordially approved of the abolition of the 2 per cent. Income Tax. At the time of the introduction of the Tax by the late Mr. Wilson, he (Mr. Cowie) thought that the limit had been fixed too low, and two years' experience as an Income Tax Commissioner had convinced him that the greater part of the oppression of which complaint was made in the collection of the Income Tax, was exercised in respect of the 2 per cent. levied on the smaller Incomes. With reference to the continuance of the remainder of the Tax for three years more, he trusted that the

prosperity of the country would be so progressive that the Council might be able to remove it altogether before the expiration of that period.

The Hon'ble MR. FITZWILLIAM said that he was happy to join in the congratulations of his colleague on the Financial Statement which the Council had just heard. He considered that the reduction of the Import Duties would afford an important relief to the country, and especially to its commerce. He fully concurred with Mr. Cowie in his views of the Income Tax, and could, in like manner, speak from experience as a Commissioner for its collection. The Tax had the effect of promoting both oppression and immorality, more particularly in its operation, on the large class who would now be relieved. As a Member of that Council, he felt happy to give his cordial assent to the present partial remission of the Tax, and he hoped that the time might soon arrive when the Tax could be dispensed with altogether.

His Honor the LIEUTENANT-GOVERNOR said that, as his views on the Import Duties had been alluded to by Mr. Laing, it might be necessary to explain them for the satisfaction of those Members of the Council who were not Members of the Executive Council, and therefore had not seen the papers on the subject. No Member of the Council objected more strongly than he did to all Duties in the nature of protective Duties; and if he had thought that the question of protection was involved in the difference between a 5 per cent. and 10 per cent. Duty, he should have considered that the additional 5 per cent. should be the first to be remitted, or if the whole Tax partook of the character of a protective Duty, he should have been in favor of its being taken off altogether. But looking at the Tax merely as one for Revenue, in preference to the License Tax which was then about to be imposed, he thought that it was free from objection. The License Tax, however, had been given up, and thereby a considerable burden of anxiety had been removed from his mind. His impression was that the next Tax to be assailed, should be the Income Tax, in preference to the Duties on Importations. But if practical men said that those Duties acted as protective Duties, then no one more heartily approved of their remission than himself.

The Motion was then put and agreed to.

The Hon'ble MR. LAING then applied to His Excellency the President to suspend Rules 15 and 16 for the conduct of business, in order that he might introduce the Bill.

His Excellency the PRESIDENT declared the Rules in question suspended.

The Hon'ble MR. LAING then introduced the Bill, and moved that it be referred to a Select Committee with instructions to report in a week.

The Motion was put and agreed to.

INCOME TAX.

The Hon'ble MR. LAING moved for leave to bring in a Bill to amend Act XXXII of 1860 (for imposing Duties on Profits arising from Property, Professions, Trades, and Offices).

The Motion was put and agreed to.

The Hon'ble MR. LAING then applied to His Excellency the President to suspend Rules 15 and 16 for the conduct of business, in order that he might introduce the Bill.

His Excellency the PRESIDENT declared the Rules in question suspended.

The Hon'ble MR. LAING then introduced the Bill, and moved that it be referred to a Select Committee with instructions to report in a week.

The Motion was put and agreed to.

CONTRABAND SALT (OUDE)

The Hon'ble MR. HARINGTON moved for leave to bring in a Bill to extend Act XIV of 1843 (for regulating the levy of Customs Duties and the manufacture of Salt in the North-Western Provinces of the Presidency of Bengal), and Act XXXVI of 1855 (to empower Officers of Customs and Land Revenue to search houses and other enclosed places for contraband Salt in the North-Western Provinces) to the Province of Oude, and to amend the last mentioned Act. He said that an Act was passed last year by the late Legislative Council to regulate the Manufacture of Saltpetre by requiring that such Manufacture should be carried on under license, and to enable the manufacturers of Saltpetre to refine the Salt produced in the Manufacture of Saltpetre, and to sell the same on payment of the Government dues. The Act, as it passed, took effect at once only in the North-Western Provinces, but it contained a provision, authorizing the Governor-General in Council to extend its provisions to other parts of India. This power had lately been exercised in the case of Oude, to which Province the Act was extended by an order of the Governor-General in Council, dated the 9th April; but the Act of last year referred in one of its provisions to two previous Acts relating to Salt which were not in force in Oude; and the local authorities, with whom the Government of India concurred, considering it desirable that these Acts should also be extended to the Province of Oude with effect from the date on which the Act of last year was extended to the Province, the present Bill had been framed to effect such extension. It was also proposed to take the opportunity of the introduction of the present Bill to amend one of the Sections of the two Acts which they were asked to extend to the Province of Oude, in so far as it related to forcible entries in cases of search for contraband Salt, and to bring the law in respect of such searches into conformity with the Code of Criminal Procedure.

The Motion was put and agreed to.

The following Select Committees were named :

On the Bill to amend Act XIV of 1859 (to provide for the Limitation of Suits)—the Hon'ble Messrs. Laing, Harington, Erskine, and Fitzwilliam.

On the Bill to amend Act X of 1860 (to amend Act VII of 1859, to alter the Duties of Customs on Goods imported or exported by Sea)—the Hon'ble Messrs. Laing, Harington, Fitzwilliam, and Cowie.

On the Bill to amend Act XXXII of 1860 (for imposing Duties on Profits arising from Property, Professions, Trades, and Offices)—the Hon'ble Messrs. Laing, Harington, Fitzwilliam, and Cowie.

The Council adjourned till Wednesday, the 23rd instant, at 11 A. M.

M. WYLIE,
Deputy Secy. to the Govt. of India,
Home Department.

CALCUTTA,
The 16th April 1862.

Abstract of the Proceedings of the Council of the Governor-General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic. C. 67.

The Council met at Government House, on Wednesday, the 23rd April 1862.

PRESENT:

His Excellency the Viceroy and Governor-General of India, *Presiding.*
The Hon'ble Cecil Beadon.
Major-General the Hon'ble Sir R. Napier, K. C. B.
The Hon'ble S. Laing.
The Hon'ble H. B. Harington.
The Hon'ble H. Forbes.
The Hon'ble C. J. Erskine.
The Hon'ble W. S. Fitzwilliam.
The Hon'ble D. Cowie.
The Hon'ble Rajah Deo Narain Singh Bahadoor.

REPEAL OF ACT II OF 1835.

The Hon'ble MR. BEADON moved that the Report of the Select Committee on the Bill to repeal in part Act II of 1835 be taken into consideration, and that the Bill, as settled by the Select Committee, be passed.

The Motion was put and agreed to.

NEW COINAGE.

The Hon'ble MR. HARINGTON moved that the Report of the Select Committee on the Bill to provide for a new Silver and a new Copper Coinage be taken into consideration, and that the Bill, as settled by the Select Committee, be passed.

The Motion was put and agreed to.

CRIMINAL PROCEDURE CODE AMENDMENT.

The Hon'ble MR. BEADON presented the Report of the Select Committee on the Bill to amend the Code of Criminal Procedure. He stated that, as the Select Committee had found it necessary to alter the frame-work and limit the scope of this Bill, he felt it desirable to explain the reason of the course they had adopted. The Bill, as drawn by Mr. Ritchie, had not been revised by him, and appeared to

have been framed on the principle of giving power to Government, in extending the Code of Criminal Procedure, to modify its provisions so as to meet all the proposals of the local Officers. But the Select Committee had found that, in some instances, those modifications were not necessary, and that, in one point at least, a change was inexpedient. The Bill therefore was confined to two points. The first of these had reference to the Courts by which offences might be tried and sentences passed. It had been pointed out by the Authorities in the Punjab that the powers which, under the Code, they could give to Deputy Commissioners, were less than the powers they now exercised. The Bill therefore authorized the Government to empower Officers of that description to try all offences not punishable with death, limiting the sentences to seven years' imprisonment, or fine, or both.

The second point contemplated by Mr. Ritchie was the modification of the Police Chapter. This had been introduced solely to meet the case of Oude. But subsequently it was found to be not necessary. The Select Committee had not seen it necessary to provide specially for Juries, because it was in the discretion of the Government to authorize the use of Juries in particular Districts or not. With respect to Sections 398, 401, and 420, which required that sentences referred to the Sudder Court should be dealt with by two Judges, the Bill provided that, where the powers of the Sudder Court were, under the provisions of the Code, exercised by a single Officer, he should have all the powers of two Judges under those Sections. It had been provided in the Bill, as drawn by Mr. Ritchie, that the power of revision by Courts other than the Sudder Court might be extended to the Non-Regulation Provinces with modifications. But the Committee were not favorable to altering the provisions of the Code in this respect. In Oude, in which Province an alteration had been applied for, the Judicial Commissioner was accessible, and had leisure to exercise a special superintendence of the Courts. The Report of the Select Committee would be in the hands of the Council, and on Wednesday next he would move that the Bill be passed, embodying the two Sections which were deemed necessary.

LIMITATION OF SUITS.

The Hon'ble Mr. Laing presented the Report of the Select Committee on the Bill to amend Act XIV of 1859 (to provide for the limitation of suits), and applied to His Excellency the President to suspend Rule 28 for the conduct of business. He stated that the only amendment was of a purely verbal character, and it was desirable that the Bill should be passed without delay.

His Excellency the President declared the Rule in question suspended.

The Hon'ble Mr. Laing then moved that the Report of the Select Committee be taken into consideration, and that the Bill, as settled by the Select Committee, be passed.

The Motion was put and agreed to.

CUSTOMS DUTIES.

The Hon'ble MR. LAING presented the Report of the Select Committee on the Bill to amend Act X of 1860 (to amend Act VII of 1859, to alter the Duties of Customs on goods imported or exported by Sea), and applied to His Excellency the President to suspend Rule 23 for the conduct of business. He said that the alterations in the Bill were simply to add the words "Silk Chussum," after the words "Raw Silk;" and to strike out words that were unnecessary.

His Excellency the PRESIDENT declared the Rule in question suspended.

The Hon'ble MR. LAING then moved that the Report of the Select Committee be taken into consideration, and that the Bill, as settled by the Select Committee, be passed. He said that it was desirable that the new Duties should come into operation without delay.

The Hon'ble RAJAH DEO NARAIN SINGH said that, he gladly availed himself of this opportunity to express his warm admiration of the Financial Statement submitted by the Hon'ble Mr. Laing at the last Meeting of the Council. In that Statement it was shown that, owing to the excellent management of the Hon'ble Member, the expenditure had been considerably diminished, while the Income had at the same time improved, and a large increase of treasure had accumulated in the Government Treasuries. This was no easy task, and its accomplishment, while giving new strength to the Empire, had greatly benefited the people by occasioning the repeal of the two per cent. Income Tax, the License Tax, and the abolition or diminution of sundry Customs Duties. The following advantages too, would on consideration, be found to have resulted therefrom:—

1*st.*—The two per cent. Duty bore most heavily on Incomes of not more than 500 Rupees, and the relief occasioned by its repeal would be sensibly felt. The License Tax was most oppressingly felt by Artizans, &c., and was a source of daily annoyance to them, and its repeal would restore to them their peace of mind and fill their hearts with gratitude to their Sovereign, for the continuance of whose reign they would offer up hearty prayers.

2*nd.*—Although Act XXXII of 1860 imposed the Income Tax for a specified term of five years, people did not believe it would ever be taken off again; many instancing that, though in England the Tax had been first imposed for a limited period, it had since become permanent. The partial repeal of the Tax within the period authorized by law would have the immediate effect of driving such false surmises out of the heads of the people, and of convincing them that the Tax would really be taken off on the expiry of the five years for which it was imposed, and they would be ashamed of their former doubts.

3*rd.*—When Act XXXII was published, it was stated that Government was forced to impose the Tax for the purpose of equalizing the Income and Expenditure, and to make good losses incurred by the Mutiny. This statement was by most people looked upon as a mere excuse for raising money, the fact of

Government having suffered any loss being denied. The falseness of these doubts would now be proved by the fact of Government having taken off the Tax as soon as the state of the finances would permit, and people would see that its imposition was forced on the Government, and that the Government was not actuated by a desire to screw money out of the people. The most important result, however, would be that the people would place entire confidence in their Sovereign in whose service they would be ready to lay down their lives.

Finally, too much could not be said in praise of Mr. Laing who, undeterred by several serious attacks of illness, had labored unceasingly and to such good purpose as in a short time to produce results quite unlooked for by the Natives of this country, who could not but feel the heavy debt of gratitude they all owed him. The Native Members of that Council were specially under obligation to him, for as these remissions of taxation had been made since they had had the honor of occupying seats in the Council, they had risen high in the estimation of their fellow subjects.

The SECRETARY read the Report of the Select Committee, and the Motion was then put and agreed to.

INCOME TAX.

The Hon'ble MR. LAING presented the Report of the Select Committee on the Bill to limit in certain cases the amount of assessment to the Duties chargeable after the 31st day of July 1862, under Act XXXII of 1860 (for imposing Duties on Profits arising from Property, Professions, Trades, and Offices), and Act XXXIX of 1860 (to amend Act XXXII of 1860), and otherwise to modify the said Acts. He said that the passing of this Bill was not so immediately urgent as the Bill which had just passed the Council. The amendments proposed by the Committee had for their object to provide that there should be no fresh assessments, unless the former returns were obviously inadequate.

SUPREME COURTS' CRIMINAL PROCEDURE.

The Hon'ble MR. HARINGTON introduced the Bill to repeal Act XVI of 1852 in those parts of British India in which the Indian Penal Code is in force, and to re-enact some of the provisions thereof with amendments, and further to improve the administration of Criminal Justice in Her Majesty's Supreme Courts of Judicature, and moved that it be referred to a Select Committee with instructions to report in a week. He said, that in introducing this Bill, he considered it right to mention what he had stated when he asked for leave to bring in the Bill, viz., that the Bill had been prepared by the Honorable and learned Chief Justice of Her Majesty's Supreme Court of Judicature at Calcutta in communication with his Honorable and learned colleagues, and that a Bill so prepared, and having for its object the improvement of the Criminal Procedure in Her Majesty's Supreme Courts of Judicature in India, and its adaptation to the altered state of the substantive Criminal Law consequent on the introduction of the Indian Penal Code, might safely be accepted by this Council and passed into law. The Bill did not pretend to contain a complete Code of Criminal Procedure for Her Majesty's Supreme Courts of Judicature in India. The preparation of such a Code would be a work of considerable time. But the

present law having been found unsuited in many respects to the Indian Penal Code, and inconvenience having been experienced during the Criminal Sessions, which had already been held for the trial of offences punishable under the Penal Code, from the want of adaptation to that Code of the existing Procedure law, what the present Bill chiefly professed to do was to provide a remedy and to supply an immediate and pressing want. To this extent he thought the present Bill would be found very useful and fully to answer the purpose contemplated in its introduction. In a short time they were led to expect that Her Majesty's Letters Patent for constituting High Courts in the place of the present Supreme and Sudder Courts would reach this country, and on their arrival the Procedure to be observed in the High Courts on both the Civil and Criminal sides would have to be considered and determined. New Codes for the High Courts might be found necessary, and should such be the case, he thought that the preparation of the Criminal Code would be greatly facilitated by this Bill. He would only add that the Bill contained certain Sections relating to the custody of persons under sentence in the House of Correction, which, if adopted, would, he believed, remove the objections which were considered to exist to some of the provisions of a Bill lately passed by the Legislative Council of Bengal for the maintenance of discipline in the House of Correction, and, in so far as those objections were concerned, enable His Excellency the Viceroy to assent to that Bill.

The Hon'ble MR. BEADON said that, as this Bill was avowedly of a temporary character, he would suggest that the Select Committee should consider whether that should not distinctly appear in the Bill by a Section limiting its continuance. The Council were no doubt quite willing to accept the Bill on the authority of the learned Chief Justice. But as the High Court would probably be established within a year, that period might be specified for the continuance of this measure.

The Hon'ble MR. HARINGTON said that the suggestion of Mr. Beadon would be considered in Select Committee.

The Motion was put and agreed to.

CONTRABAND SALT (OUDE).

The Hon'ble MR. HARINGTON introduced the Bill to extend to the Province of Oude certain provisions of Acts XIV of 1843 and XXXVI of 1855 relating to the Manufacture of contraband Salt, and to amend the last-named Act, and moved that it be referred to a Select Committee with instructions to report in a week.

The Motion was put and agreed to.

The following Select Committees were named :—

On the Bill to repeal Act XVI of 1852 in those parts of British India in which the Indian Penal Code is in force, and to re-enact some of the provisions

thereof with amendments, and further to improve the administration of Criminal Justice in Her Majesty's Supreme Courts of Judicature—the Hon'ble Messrs. Harington, Forbes, and Erskine.

On the Bill to extend to the Province of Oude certain provisions of Acts XIV of 1843 and XXXVI of 1855 relating to the Manufacture of contraband Salt, and to amend the last named Act—the Hon'ble Messrs. Harington, Forbes, and Erskine.

The Council adjourned till Wednesday, the 30th instant, at 11 A. M.

M. WYLIE,
Depy. Secy. to the Govt. of India,
Home Department.

CALCUTTA,
The 23rd April 1862.

Abstract of the Proceedings of the Council of the Governor-General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliment 24 and 25 Vic. C. 67.

The Council met at Government House, on Wednesday, the 30th April 1862.

PRESENT.

His Excellency the Viceroy and Governor-General of India, *presiding.*
His Honor the Lieutenant-Governor of Bengal.
Major-General the Hon'ble Sir R. Napier, K. C. B.
The Hon'ble S. Laing.
The Hon'ble H. B. Harington.
The Hon'ble W. Grey.
The Hon'ble H. Forbes.
The Hon'ble C. J. Erskine.
The Hon'ble W. S. Fitzwilliam.
The Hon'ble D. Cowie.

CRIMINAL PROCEDURE CODE AMENDMENT.

His Honor the LIEUTENANT-GOVERNOR moved that the Report of the Select Committee on the Bill to amend the Code of Criminal Procedure be taken into consideration, and that the Bill, as settled by the Select Committee, be passed.

The Motion was put and agreed to.

INCOME TAX.

The Hon'ble MR. LAING moved that the Report of the Select Committee on the Bill to limit in certain cases the amount of assessment to the Duties chargeable after the 31st day of July 1862 under Act XXXII. of 1860, (for imposing Duties on Profits arising from Property, Professions, Trades, and Offices), and Act XXXIX of 1860 (to amend Act XXXII of 1860), and otherwise to modify the said Acts, be taken into consideration, and that the Bill, as settled by the Select Committe, with the amendment of which notice had been given, be passed. He said that, the amendment which he had proposed was merely designed to meet the case of those who had returned no profits in the first year, and therefore had not been assessed in the second, but who subsequently had made profits which, it was the manifest intention of the Bill, should be assessed to the Duties under the Income Tax Act. A Memorial had been received from the British Indian Association stating that they saw no provision in the Bill for repealing the 2 per cent. Duty But the 14th Section, which they appeared to have overlooked, provided for that

object. The Memorial also commented on the power given by the Bill to re-open assessments. But the amendment of the Select Committee had guarded that provision, and limited the power to cases in which the returns were obviously inadequate. If the Revenue only were concerned, it might not be worth while to make any special provision on the subject. But justice to other tax-payers required that, in such cases the parties liable to the Duties should not wholly escape. The power of re-assessing was limited to Commissioners and Collectors, and the intention was that it should be exercised with great discretion, and only when neglect of it would operate as a grievance on others.

The Motion was put and agreed to, and the Bill as settled by the Committee with the following amendment, was passed accordingly :—

Section VII, line 19. After the word "jurisdiction" the introduction of the words "*or to any person to whom such special notice shall have been issued but who shall not have been assessed to the said Duties for the said year by reason of the amount of his profits or income not rendering him liable to the said Duties, or for any other cause.*"

CRIMINAL LAW REPEAL.

The Hon'ble MR. HARINGTON moved that the Report of the Select Committee on the Bill to repeal certain Regulations and Acts relating to Criminal Law and Procedure be taken into consideration, and that the amendments proposed by the Committee be adopted.

The Motion was put and agreed to.

The Hon'ble MR. ERSKINE then moved the following amendments of which he had given notice :—

Section III, lines 16 and 17. The omission of the words "in the manner provided in Section 445 of the said Code."

The addition of the following Section after Section VI :—

"*Nothing in this Act shall affect any sentence or order passed, or any proceeding held, or any Act done previously to the passing of this Act and in accordance with any Act or Regulation repealed by this Act.*"

In the Schedule, the omission of the words "Act XXXV of 1837. The whole Act," and the substitution of the words "*Act XXXVII of* 1837. *The whole Act.*"

The omission of the words "Act IV of 1838. The whole Act."

In the third column opposite Act XXX of 1841, the omission of the words "in so far as it relates to Courts of Justice," and the substitution of the words "*Section I.*"

In that portion of the Schedule which relates to the Bombay Regulations :—

In the third column opposite Regulation XII. 1827, the insertion after the words " Clause 2 of Section XXVII" of the words " *Section XXX.*"

In the same entry the omission of the words " Section XXXVII" and the substitution of the words " *Sections XXXVII and XL.*"

In the third column opposite Regulation XIII. 1827, the insertion after the words " Clauses 1 and 2, Section XXXI" of the words " *Clause* 3 *of Section XXXIII.*"

In the same entry the omission of the words " and Clause 9 of the same Section" and the substitution of the words " *and except Clause* 9 *of the same Section, Clause* 2 *of Section XXXVI, and Clauses* 1 *and* 2 *of Section XLIII.*"

After the entry relating to Regulation XIV. 1827, the insertion of a new entry as follows :—

" *Regulation XV.* 1827.—*A Regulation containing rules under which landholders may be invested with Police authority within their respective lands, or other convenient limits, and deprived of the same: and declaring the mode of procedure to be followed in regard to them in Criminal matters. The whole Regulation.*"

In the third column opposite Regulation XXIII. 1827, the omission of the words " Section V" and the substitution of the words " *The whole Regulation.*"

He said that these amendments were prepared chiefly in accordance with a despatch which had been received from the Bombay Government within the last few days. They did not in any respect infringe the principle of the Bill, and as they were recommended by the Sudder Court, and related almost exclusively to details of Criminal Procedure, and the Bombay Government had not stated any objection to them, he felt it to be unnecessary to enter into any detailed explanations of them.

The Hon'ble Mr. HARINGTON, with the permission of the President, moved the following two further amendments : 1*st.*—That in the 3rd column opposite to Regulation XV. 1806 of the Bengal Code, the words " *The whole Regulation*" be substituted for the words " Sections II, III, IV, and V ;" Section I of that Regulation being merely a Preamble, and the only other Section of that Regulation having been already repealed. 2*nd.*—That the entry relating to Regulation XXII. 1816 of the same Code be omitted, the whole of that Regulation having been already repealed.

The Hon'ble Mr. HARINGTON then moved that the Bill, with the amendments proposed, be passed.

The Motion was put and agreed to.

SUPREME COURTS' CRIMINAL PROCEDURE.

The Hon'ble MR. HARINGTON presented the Report of the Select Committee on the Bill to repeal Act XVI of 1852 in those parts of British India in which the Indian Penal Code is in force, and to re-enact some of the provisions thereof with amendments, and further to improve the administration of Criminal Justice in Her Majesty's Supreme Courts of Judicature; and applied to His Excellency the President to suspend Rule 23 for the conduct of business.

His Excellency the PRESIDENT declared the Rule in question suspended.

The Hon'ble MR. HARINGTON then said that, the amendments proposed by the Select Committee were numerous, but were chiefly verbal, and the Chief Justice had seen and approved of them. The suggestion of the Lieutenant-Governor, that the Bill should be limited to a certain time, had been considered by the Committee, who were of opinion that the words which they had introduced into the Preamble would sufficiently mark the temporary character of the Bill. The preparation of a Code of Criminal Procedure for the Supreme Courts would be the duty of this Council, from whatever source the materials might come; and although it would be quite proper to submit any such Code for the approval of the learned Judges before it was passed into law, still the responsibility and duty of passing any Code that might be so prepared, must rest with the Council; and unless they wished to throw the Supreme Court back on the state of things which this Act was intended to remedy, this Act must remain in force, subject to any modifications that might be found necessary, until such a Code was brought into operation.

His Honor the LIEUTENANT-GOVERNOR said that the addition to the Preamble sufficiently fulfilled the object he had in view.

The Hon'ble MR. HARINGTON, with the permission of the President, then moved the following additional amendments :—

Section XLVI, the insertion of the words "*in either case*" after the word "and" and before the word "that" in line 13.

Section XLIX, to strike out the word "aforesaid" in line 5, and to insert the following words in the place thereof: "*mentioned in either of the last two preceding Sections;*" to insert the words "*they both*" at the end of line 13.

Section LII, to strike out the word "to" in line 14, and to insert the word "*of*" in lieu thereof; to strike out the word "or" in line 15, and to insert the word "*and*" in lieu thereof.

Section LIII, to strike out the word "or" in line 14, and to insert the word "*and*" in lieu thereof.

Section LIV, to strike out the word "thereof" in line 8, and to insert the words "*of the Act*" in lieu thereof.

Section LVI and LVII,——to transpose these Sections.

The Motion was then put that the Bill with the proposed amendments, be passed, and was agreed to.

CONTRABAND SALT (OUDE.)

The Hon'ble MR. HARINGTON presented the Report of the Select Committee on the Bill to extend to the Province of Oude certain provisions of Acts XIV of 1843 and XXXVI of 1855 relating to the manufacture of contraband Salt, and to amend the last named Act; and applied to His Excellency the President to suspend Rule 23 for the conduct of business.

His Excellency the PRESIDENT declared the Rule in question suspended.

The Hon'ble MR. HARINGTON then moved that the Report of the Select Committee be taken into consideration, and that the Bill be passed.

The Motion was put and agreed to.

ADJOURNMENT.

His Excellency the PRESIDENT said that, in now adjourning the Council, he did not propose to adjourn it in the usual manner to the following Wednesday, and it might be convenient to the Members that he should state that he did not propose to call them together again until some time in November next. The Members were aware that, under the Act of Parliment, the Governor-General was empowered to summon the Council to assemble whenever and wherever he thought necessary, and he did not intend, by any declaration he now made, to divest himself of the power with which he had been entrusted for the public good. Subject to that reservation, it would be convenient to the Members, who had other interests and avocations, to be informed by him of the period when they were likely to meet again. At present he would adjourn the Council without naming the time and place for its next meeting.

The Council then adjourned.

M. WYLIE,

Depy. Secy. to the Govt. of India,

Home Department.

CALCUTTA,
The 30th April, 1862.

Abstract of the Proceedings of the Council of the Governor-General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic. C. 67.

The Council met at Government House, on Saturday, the 19th July 1862.

PRESENT:

His Excellency the Viceroy and Governor-General of India, *Presiding.*
Major-General the Hon'ble Sir R. Napier, K. C. B.
The Hon'ble H. B. Harington.
The Hon'ble W. Grey.
The Hon'ble C. J. Erskine.
The Hon'ble W. S. Fitzwilliam.
The Hon'ble D. Cowie.

HIGH COURT.

The Honorable MR. HARINGTON moved for leave to bring in a Bill to provide for the levy of Fees and Stamp Duties in the High Court of Judicature at Fort William in Bengal, and to suspend the operation of certain Sections of Act VIII of 1859 in the said High Court. He said that the principal object of the Bill, as Honorable Members would have observed from the copies of the Bill in their hands, was—firstly, to make temporary provision for the levy of Court Fees in the business coming before that part of the High Court of Judicature recently established at Calcutta under Her Majesty's Letters Patent, which represented the late Supreme Court of Judicature at Fort William in Bengal, thus continuing for a time the practice in respect to the payment of Fees which obtained in that Court; and, secondly, for taking Judicial Stamps in accordance with Section XXX of Act X of the Current Year in that part of the High Court which represented the late Court of Sudder Dewanny and Nizamut Adawlut for the Lower Provinces of Bengal.

The Act of Parliament passed last year, under which the Letters Patent constituting a High Court of Judicature at Calcutta were issued, contained a provision for the settlement of Fees to be allowed to the Sheriff, Attorneys, and all Clerks and Officers of the High Court; but it was open to question whether under this provision Fees could be levied which, although paid to Officers of the Court, were not to be allowed to the Officers receiving them, but were intended to be carried to the credit of Government. By an arrangement made between the Government and the late Supreme Court, certain Officers of that Court who

were previously paid by Fees, were remunerated for their services by fixed salaries instead of by Fees, and the Fees received by them were accounted for to Government, and formed into a General Fund, out of which the salaries of the Officers were paid. It was considered desirable to continue this arrangement, for a time at least, not only as respects certain of the Officers attached to the late Supreme Court who had been appointed to the High Court, pending a revision of the entire ministerial establishment of the Court, but also in regard to other Officers who might be appointed to the High Court while the present Bill remained in force.

In the late Sudder Court for the Lower Provinces of Bengal, Stamp Duties were chargeable under Section XXX of Act X of 1862 on all Instruments and writings of the kinds specified as requiring Stamps in Schedule B annexed to the Act, but Courts established by Royal Charter, which it was unnecessary for him to say was the character of the High Court, as representing both the late Supreme and the late Sudder Court, were excepted by express words from the operation of the Section, and some provision of law was therefore required to enable the High Court to continue, as a temporary arrangement, to levy Stamp Duties in cases coming before it in which they would have been leviable had they come before the late Sudder Court. Whether it would be right to maintain the distinction contained in this Bill, according to which Court Fees would be taken in some portion of the business coming before the High Court, and Stamp Duties would be charged on other business coming before the Court, or whether a uniform system in the form either of Court Fees or of Stamp Duties should not be introduced throughout the Court, were questions deserving of consideration. The Government would consult the Honorable and learned Judges of the High Court on the subject, and on receiving the opinion of the Court, they would propose such legislation as might appear proper. One of the reasons for giving a temporary character to the present Bill, which it was proposed should remain in force for a period of only six months, was that these questions might be fully considered before any permanent measure was proposed for adoption. Another reason was, that it was not thought proper to pass any permanent law introducing great and important changes in the practice of the High Court without a previous publication, for the usual period, of the Bill proposing such alterations, and without giving every Honorable Member of the Council full time to consider the same. These remarks applied also to the remaining provisions of the Bill as printed.

The first of these provisions proposed to suspend the operation in the High Court of certain Sections of the Code of Civil Procedure, which prescribed, by a series of rules, the manner in which the judgments and orders of the Courts of Civil Judicature were to be recorded. There could be no doubt that the observance of these rules imposed considerable labor on the Judges, and were attended with an expenditure of time which, looking to the very heavy arrears of business pending before the High Court, the Judges of that Court could ill afford

to give to the task. The Sections in question were well adapted to, and were very suitable for, the Mofussil Courts. But they were not equally well adapted to the High Court, and there could not be the same necessity for their strict observance in that Court. The Royal Commissioners, who were the original framers of the Code of Civil Procedure, exempted the judgments of the High Court from the operation of these Sections, and the Legislature of this country which passed the Code into law, never intended that it should apply in its entireness to the High Courts. Indeed he might say that it was always contemplated in this country, that a separate Code of Civil Procedure would be prepared for the High Courts whenever they should be established. What was now proposed was that, pending further legislation, the Judges of the High Court should record their judgments and orders in such manner as that Court should by rules to be framed by them direct.

The next provision of the Bill related to the appeals which were to be allowed from decisions passed by the High Court, in the exercise of its ordinary original Civil Jurisdiction. The only appeals allowed from the decisions of the late Supreme Court were to Her Majesty in Council. But as the High Court was constituted, decisions passed by a bench consisting of one or more Judges of the Court, not being a majority of the full number of Judges, in the exercise of the ordinary original Civil Jurisdiction of the Court, would lie to another bench of the Court. Under the Code, ninety days would be allowed for preferring such appeals, which was obviously too long a time. In fixing ninety days as the period within which appeals should be preferred to the Sudder Courts, the framers of the Code were obliged to have regard not only to the parts of the country within the jurisdiction of the Sudder Courts in the neighbourhood of the place where the sittings of the Courts were held, but also to the more remote parts, and for such parts the time allowed was not too long. But the appeals coming within the Section of the Bill to which he was now referring, would be made in cases arising within the immediate vicinity of the High Court, and as these appeals would be very much in the nature of applications for a new trial, it did not seem necessary that a very long time should be allowed for preferring them. It was proposed to allow the High Court to fix the time by rule. The rule so framed might probably with advantage be embodied in any Bill hereafter introduced to amend the Code of Civil Procedure. Meanwhile it would be right that the rule adopted by the Court should be published in the Gazette for general information.

The next Section was intended for the High Courts which might be established within the next six months at Madras and Bombay. Then followed a Section giving retrospective effect to the Act, which seemed necessary in respect to any Fees or Stamp Duties levied since the establishment of the Court on the 1st of the present month.

The concluding Section provided that the Act should remain in force until the 1st January 1863. This would give time for the consideration of any further

legislation relating to the High Court, not only on the points mentioned in the Bill, but also on other points in respect of which some legislation might intermediately be shown to be necessary.

Mr. Harington went on to say that, since the Bill was printed and circulated, he had been asked to introduce three more Sections. The first related to what were called warrants of Attorney to confess judgment, and cognovits. He was informed there were many such instruments in existence upon which judgments had not yet been signed. They gave power to confess judgment, or to allow judgment to go by default, only in the late Supreme Court, and a question might arise, and indeed he believed had already arisen, whether this power extended to that part of the High Court which represented the late Supreme Court. The Section was intended to remove all doubt upon the point, and to prevent what would be a fraudulent defence in order to escape from what was taken as a security for money lent, being set up.

The next new Section had reference to the costs of suits decided by the High Court in the exercise of its ordinary original Civil jurisdiction, after judgment had been given. By a Section in the Code of Civil Procedure, the amount of costs with other particulars was required to be entered in the decree, and the decree could not be signed by the Court, much less executed, until the costs had been entered in it. But the costs of suits in the late Supreme Court were always taxed by an Officer appointed for the purpose. This often occupied some time, and if the decree could not be enforced until the costs had been taxed, it would give judgment-debtors an opportunity of making away with their property, of which they would not be slow to avail themselves. The Section gave power to the Judges of the High Court on the application of judgment-creditors to enforce decrees passed by the Court in the exercise of its original jurisdiction, with the exception of so much of the decree as related to the costs of suit, although the amount of the costs should not have been ascertained by taxation or entered in the decree.

The remaining new Section related to the legal Practitioners of the High Court. They were of three classes, the Advocates, Pleaders or Vakeels, and the Attorneys-at-Law, who might also be Vakeels. By the Code of Civil Procedure, many Acts would require to be done by Advocates or Barristers, which in the late Supreme Court were performed by Attorneys. This would add greatly to the expenses of litigation, and the object of the Section was to allow Attorneys to do all such acts in the High Court, as they had been in the habit of doing in the late Supreme Court. They would continue to appear and act, but would not be allowed to plead

The Motion was put and agreed to.

The Honorable Mr Harington then applied to His Excellency the President to suspend the rules for the conduct of business, which related to the introduction

dan passing of a Bill, with a view to enable him to move that the Bill, with the amendments referred to, be passed.

His Excellency the PRESIDENT declared the rules in question to be suspended.

The Honorable MR. HARINGTON then introduced the Bill, and moved by way of amendment that the three following new Sections be inserted after Section VI. :

"(1.) *Judgment may be signed in the said High Court upon every warrant of Attorney and "cognovit actionem" upon which a judgment might have been signed in the said late Supreme Court if such Court had not been abolished, and every such judgment may be signed, enrolled, and enforced in and by the said High Court in the same manner, and in the same manner only, as it might have been in the said Supreme Court.*

"(2.) *Whenever it shall appear necessary to a Judge of the said High Court that a decree made in the exercise of the ordinary original Civil Jurisdiction of the said Court ought to be enforced before the amount of the costs incurred in the suit can be ascertained by taxation, the Judge may order that the decree shall be executed forthwith, except as to so much thereof as relates to the costs; and as to so much thereof as relates to the costs, that the same may be executed as soon as the amount thereof shall be ascertained by taxation.*

"(3.) *Whenever any thing is directed by the said Act VIII of* 1859 *to be done by or through a Pleader, the said High Court or any Judge thereof in the exercise of the ordinary original Civil Jurisdiction of the said Court may authorize such act to be done by or through an Attorney-at-Law of the Court. Provided that no Attorney shall be authorized under the provisions of this Section to plead in the said Court or in any Division Court for any person.*

The Motion was put and agreed to.

The Honorable MR. HARINGTON then moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

The Council adjourned.

A. G. MACPHERSON.
Offg. Depy. Secy. to the Govt. of India,
Home Department.

CALCUTTA,
The 19th July 1862.

Abstract of the Proceedings of the Council of the Governor-General of India assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic. C. 67.

THE Council met at Government House, on Wednesday, the 5th November 1862.

PRESENT:

His Excellency the Viceroy and Governor-General of India, *Presiding.*
His Honor the Lieutenant-Governor of Bengal.
Major-General the Hon'ble Sir R. Napier, K. C. B.
The Hon'ble H. B. Harington.
The Hon'ble W. Grey.
The Hon'ble C. J. Erskine.
The Hon'ble R. S. Ellis, C. B.
The Hon'ble W. S. Fitzwilliam.
The Hon'ble D. Cowie.
The Hon'ble Rajah Deo Narain Singh Bahadoor.
The Hon'ble Rajah Dinkar Rao Rugonauth Moontazim Bahadoor.

The Honorable MR. ELLIS took the Oath of Allegiance, and the Oath that he would faithfully discharge the duties of his Office.

SUBORDINATE MEDICAL OFFICERS' WIDOWS' AND ORPHANS' FUND.

His Honor the LIEUTENANT-GOVERNOR presented the Report of the Select Committee on the Bill to provide for the dissolution of the Subordinate Medical Officers' Widows' and Orphans' Fund, and the distribution of the funds belonging thereto.

CONSOLIDATED CUSTOMS BILL.

The Honorable MR. ERSKINE presented the Report of the Select Committee on the Bill for the Consolidation and Amendment of the Law relating to Customs Duties.

CUSTOMS DUTIES.

The Honorable MR. HARINGTON moved for leave to bring in a Bill to amend Act XI of 1862 (to amend the Duties of Customs on Goods imported

and exported by Sea). He said that the Bill proposed three amendments in Schedule A of the Act mentioned. None of these amendments were comparatively of very great general importance, though they all affected a large number of persons. The first amendment proposed was in Article 18 of the Schedule, relating to Machinery. Previously to the passing of Act VII of 1859, Machinery of all kinds imported by Sea into the Presidencies of Bengal and Madras was liable to a Duty of 3½ per cent. when imported on British Bottoms, and of 7 per cent. when imported on Foreign Bottoms. The same Duties were chargeable at Bombay until the enactment of Act I of 1852. Under the two Acts just mentioned, Machinery imported for the improvement of the communications and the development of the resources of the Country was allowed to be admitted free of Duty, and by Act X of 1860, the exemption was extended to Machinery of all kinds. The same general exemption was contained in Act XI of 1862, which now regulated the rates of Customs Duties on Goods imported or exported by Sea throughout the British Territories in India. It was considered that the latter enactments had carried the exemption from Duty beyond what was requisite or proper, and that they involved an unnecessary sacrifice of Customs Revenue. Under Article 18, as it now stood, many articles included under the head of Machinery might be admitted free of Duty, for the exemption of which no special or adequate ground existed. It was proposed therefore to revert to the rule in force before the passing of Act X of 1860, and to confine the exemption from Duty to Machinery used exclusively for purposes of agriculture, navigation, mining, or manufacture, or for Railway purposes, and materials forming necessary component parts of such Machinery. The latter part of this Article, amended as proposed, appeared to be a proper concession in favor of component parts of Machinery used exclusively for the purposes mentioned in the former part of the Article. The Bill also proposed a slight alteration in the Note to Article 18, in order to give the Local Governments, acting under the general instructions of the Government of India, authority to control the Officers of their respective Custom Houses in construing the Article in question. A similar provision was contained in the new Customs Bill, as regarded the administration of the Department generally; and there seemed no doubt that the provision would conduce to the convenience of the public, while it left full power in the hands of the Government of India, to issue such instructions as it might consider necessary for the protection of the Customs Revenue, and for maintaining uniformity of practice in the several Presidencies.

The next alteration proposed was in Article 23 of the Schedule, relating to the Duty on Spirits. Under that Article, methylated Spirits, or Spirits used exclusively in Arts or Manufactures, or in Chemistry, were liable, on importation by Sea, to the same Duty as Spirits intended for human consumption as a beverage. It was considered that, with a view to the promotion of Arts and Manufactures, a distinction should be made between Spirits used for the purposes thereof, and Spirits used for other purposes. Spirits of Wine, under

certain restrictions, were allowed to be used Duty free in the United Kingdom; and when the Bill to amend the Law relating to the Abkaree Revenue of Bengal was before the late Legislative Council, a Section was proposed, the object of which was to place the Law in India on the same footing, in this respect, as the Law at Home; but the proposition was opposed on two grounds. The first ground was, that the state of the Finances at the time would not admit of their giving up any source of Revenue; and that, while they were imposing new Taxes, which would bear heavily on the poorer and lower classes, they ought not to remit any existing Tax, however wise it might be on principle to do so. The second ground was, that no proper means existed in this country to prevent frauds on the Revenue. With regard to the first of these grounds, the improvement which had since taken place in the state of the Finances had happily enabled the Government to remove the Taxes alluded to as affecting the poorer and lower classes; and Financial considerations no longer appear to offer any obstacle to granting the remission of Duty which had again been asked for, in favor of Spirits used in Manufactures and Arts, or in Chemistry. The Lieutenant-Governor of Bengal supported the recommendation of the Board of Revenue at Calcutta, for a reduction of the present Duty on methylated Spirits, and these Authorities seemed to anticipate no difficulty in adopting measures which would prevent any abuses from taking place consequent on an alteration of the Law. It was not proposed to admit methylated Spirits free of Duty. What was proposed was, that such Spirits should on importation be charged with an *ad valorem* Duty at the rate of 10 per cent., under such rules as the Government should from time to time prescribe for ascertaining that the Spirits were unfit for use as a beverage, and incapable of being converted to that purpose. Spirits distilled in the country, which might be intended to be used in Arts or Manufactures, or in Chemistry, would be dealt with separately.

The third and last alteration proposed in the Schedule, was the addition of an Article to exempt Fire-wood, when imported by Sea, from the payment of Duty;-thereby placing Fire-wood on the same footing as Coke and Coal, which were admitted free of Duty. Owing to the large consumption on the Railways, and other causes, Fire-wood had risen greatly in price; and in some parts of the country it was becoming very scarce. It was desirable to encourage its importation as much as possible, but the present high Duty was found to operate as a serious impediment. The amount of Customs Revenue realized on this article was very trifling, and on Financial grounds, there was no object in retaining the Duty.

The Motion was put and agreed to.

CIVIL PROCEDURE, &c, (BRITISH BURMAH.)

The Honorable Mr. HARINGTON moved for leave to bring in a Bill to define the jurisdiction and to regulate the Procedure of the Courts of Civil Judicature

in British Burmah, and to provide for the extension of certain Acts to the said Territory. He said that this Bill, while it maintained all the existing classes of Courts in British Burmah, defined the jurisdiction to be exercised by each class of those Courts, and laid down rules for the admission of Regular as well as Second and Special Appeals; which, it was considered, would greatly improve the administration of Civil Justice in that branch of the Department. Special Appeals would be admissible on the same grounds as in the Regulation Provinces; *viz.*, on the ground of the decision of the Court below being contrary to some law, or usage having the force of law, or of a substantial error or defect in law, or in the procedure or investigation of the case which might have produced error or defect in the decision of the case upon the merits. Special Appeals would be cognizable by the Chief Commissioner alone, in his capacity of Judicial Commissioner, or principal Civil Judge of the Province. But Divisional Commissioners would be allowed, on certain conditions, to admit a Second Appeal from the decisions passed in regular Appeal by the Officers subordinate to them. No such Appeal was allowed in the Regulation Provinces; but looking to the comparatively short period that British Burmah had been subject to their rule, and to other circumstances, it was considered desirable that, for a time at least, the Appellate Authorities immediately over the District Officers should possess larger powers of interference with the decisions of their subordinates, than were exercised by the corresponding Authorities in the older Provinces. The Bill proposed to extend the Code of Civil Procedure, with some modifications, to British Burmah generally. The Code was already in force, under an order of the Supreme Government, in the entire Territory, excepting the province of Pegu, in which the proceedings of the Civil Courts were regulated by a Code prepared by Major Sparks, and bearing his name. Major Sparks' Code did not differ materially from the Code of Civil Procedure; but it was considered that there should be a uniform Code for the whole Province, and the modifications now proposed did not affect the general principles of that Code, but related chiefly to the powers to be exercised, in certain matters, by the controlling Authorities, and were considered desirable to adapt the Code to the peculiarities of the Province. It was thought that the Governor-General in Council, under the authority conveyed in one of the concluding Sections of the Code, might extend the Code, by an order in Council, to the Province of Pegu; but the Advocate General was of opinion that, as, subsequently to the passing of the Code, the Supreme Government had sanctioned the introduction of Major Sparks' Code into Pegu, and as the orders passed, conveying such sanction, had since received the force of law by a Section in the Indian Councils' Act of last year, an Act of the Legislature was necessary to repeal Major Sparks' Code, and to substitute the Code of Civil Procedure for it in Pegu. The Bill also proposed to extend to Pegu, in supersession of the Law of Limitation contained in Major Sparks' Code, the general Law of Limitation contained in Act XIV of 1859. The opinion of the Advocate General, above referred to, applied equally to this case. Major Sparks had proposed two slight alterations in the General Law of Limitation, of which the Chief Commissioner had approved. One of them related to claims for the partition of joint undivided Estates, and the other to Mortgages.

The first alteration appeared to him (Mr. Harington) to be unnecessary, and to have been proposed under a mistaken view of the law. The other ought not, in his opinion, to be adopted. Should the Council allow the Bill to go to a Select Committee, he proposed to move that the communications received from the Chief Commissioner and Major Sparks be referred to that Committee, for the purpose of considering the alterations alluded to; and also the expediency of adopting the provisions in Major Sparks' Code relating to insolvency, which that Officer recommended to be retained. The other Acts which the Bill proposed to extend to British Burmah have been for some time in force in other parts of India, and had been found to work well. The Bill had been seen by the Chief Commissioner and Major Sparks, who considered it, upon the whole, admirably adapted to the existing Civil Judicial Constitution of British Burmah.

The Motion was put and agreed to.

APPEALS TO THE PRIVY COUNCIL (NON-REGULATION PROVINCES.)

The Honorable Mr. Harington moved for leave to bring in a Bill to regulate the admission of Appeals to Her Majesty in Council, from certain judgments and orders in Provinces not subject to the General Regulations. He said that the object of this Bill was, to extend to the Non-Regulation Provinces the Rules now generally in force in the Regulation Provinces, relating to the admission of Appeals to Her Majesty in Council, and to the execution of the decrees passed on such Appeals. The right of Her Majesty to admit Appeals from decisions passed by the Courts in the Non-Regulation Provinces, equally with Appeals from the decisions passed by the Courts in the Regulation Provinces, was not questioned. But there was no Law authorizing the Courts in the Non-Regulation Provinces to allow, or even to receive, Appeals from their decisions to the Queen in Council; or, of their own authority, to transmit the records of the case in which the Appeal was made, or a translation of the papers, to England. Consequently, parties wishing to appeal to the Queen in Council, from decisions passed by the Courts in the Non-Regulation Provinces, were compelled to prefer their Appeals direct to the Privy Council; and an order had to be sent from Home for the translation of the papers, and their transmission to England. This necessarily added to the expense, and caused delay in the hearing and decision of the Appeal. A communication had been received from the Registrar of the Privy Council, conveying the opinion of the Judicial Committee of that Council, that measures should be taken to place the prosecution of Appeals from the highest Civil Tribunals in the Non-Regulation Provinces on the same footing as Appeals to Her Majesty in Council from the Courts in the Presidencies of Bengal, Madras, and Bombay. It was in contemplation to revise the existing Rules relating to Appeals to Her Majesty in Council from the Courts in this country, and to frame a new Code of Rules to regulate such Appeals; but some time must necessarily elapse before the new Code was ready for promulgation.

The Motion was put and agreed to.

WORKS OF PUBLIC UTILITY BY PRIVATE PERSONS OR COMPANIES.

The Honorable Mr. Harington moved for leave to bring in a Bill to provide for taking land for works of public utility to be constructed by private persons or Companies, and for regulating the construction and use of works on lands so taken. He said that, in the early part of the year, their late lamented colleague, Mr. Ritchie, had obtained leave to bring in a Bill to provide for the construction, by Companies and private persons, of Branch Railways, Iron Tram-Roads, Common Roads, or Canals, as feeders to Public Railways, High Roads, Navigable Rivers or Canals. It was Mr. Ritchie's intention to have introduced a Bill similar, so far as details were concerned, to the Bill which was introduced with a similar object into the late Legislative Council, though with a somewhat wider scope. That Bill was not proceeded with in consequence of the abolition of that Council. The Bill, framed as intended by Mr. Ritchie, having been considered by the Government in the Public Works Department, it was thought that the scope of the Bill might be well extended beyond what was advised by Mr. Ritchie; and that any Bill introduced, instead of being confined in its application to Branch Railways, Iron Tram-Roads, Common Roads, or Canals, as feeders to other works, might properly embrace many other works of public utility. Section II of the Bill which he was now asking leave to introduce, defined the works of public utility to which it was intended to apply the provisions of the Bill, to be Bridges, Roads, Railroads, Tram-Roads, Canals for Irrigation or Navigation, Tanks, Works for the Improvement of Rivers or Harbours, Docks, Quays, Jetties, Water-works, Gas-works, Mines, Iron or Copper-works, Drainage works, or Electric Telegraphs; and also all works subsidiary to such works. The same Section of the Bill further gave power to the Governor-General in Council, from time to time by a declaration to be made to that effect, and published in the *Official Gazette*, to order that any other class of works, other than those named, should be included among works of public utility within the Act. It might be thought that this part of the Bill went too far; but it appeared to him that the Government of India might be safely entrusted with the power thus proposed to be given to it, and that the public might feel satisfied that the power would be discreetly used, and that it would only be exercised for the public benefit. It was also considered that the details of the Bill, as proposed by Mr. Ritchie, might be greatly improved; and that they should be made to assimilate more nearly to the laws of the same nature which were in force at Home. These considerations had led to an entire remodelling of the Bill. The Bill as now framed was in point of fact a new Bill, and it had been thought better therefore that, instead of introducing the Bill under the permission formerly accorded, he should ask for leave in the usual way to bring in the Bill. He believed the Bill would be found, in all respects, a very great improvement both on the Bill introduced into the late Legislative Council, and on the Bill proposed by Mr. Ritchie. The Bill in its present form appeared to him to be well adapted to the end in view; and if it should be allowed to become law, it would materially

promote the object contemplated in its introduction, and greatly facilitate the construction of works of public utility, such as are described in Section II of the Bill. In framing the Bill it had to be considered whether the Bill would be of general application; *i. e.*, whether its provisions should apply to all India, or whether the application of the Bill should be confined to those parts of India for which the Council of the Governor-General alone could legislate. As a general rule, he thought there could be no doubt that the Government of India would not legislate for the Local Governments which had Legislative Councils of their own, on any matters in respect of which those Governments were competent to legislate for themselves. The part of the Indian Councils' Act of last year, which related to legislation, was evidently framed on this principle. The soundness of the principle was fully recognized by the Government of India, and it would be scarcely necessary for him to say, that the Government of India could have no desire to encroach upon the functions of the local Legislatures, or in any way to interfere with the exercise, by those Legislatures, of the powers vested in them by the Act of Parliament just mentioned. But when a law was required for the Empire at large, whether the law was to be the work of a single Legislature, or of several distinct Legislatures, the general principles observed in framing it, and the essential details, must be the same. He ventured to think that there must be a great public convenience in having a single law for all India passed by the Government of India which alone was competent to pass a general law, instead of two or more laws passed by different Legislatures acting independently of one another. The fact that there were, at the present time, two Branch Railways and other Public Works Bills pending; one before the Council of the Governor of Bombay, and the other before the Council of the Lieutenant-Governor of Bengal, the provisions of which differed little, if at all, from the Bill proposed by Mr. Ritchie; and that Mr. Ritchie considered that a Bill such as was proposed by him was all that was required for the entire country, would seem clearly to show, that the legislation needed at this time was of the general character which he had described; and that, consequently, there could be no necessity for separate Acts for the different Presidencies, or for different parts of the same Presidency.

In addition to what he had already mentioned in favor of a general Bill, such as he was now asking leave to introduce, he might repeat what was stated by Mr. Ritchie in the remarks with which he prefaced his motion for leave to introduce the Bill proposed by him; namely, that, as a Railroad for which feeders were to be provided (and the same observation applied to Canals, High Roads, and other public works) might pass through several Districts, or different Presidencies, two different Acts might be objectionable. Under these circumstances, he (Mr. Harington) hoped that when the Government of Bombay and His Honor the Lieutenant-Governor of Bengal saw the present Bill, they would agree in considering its provisions well suited to the Territories under their Governments, equally with the

rest of India; and that, concurring in the conclusion arrived at by the Government of India, that it would be in every way more convenient and desirable that the present Bill should apply generally to all India, rather than that separate Bills should be passed for the several Presidencies, they would not consider it necessary to proceed with the Bills pending before their respective Councils.

MR. ERSKINE said that he had no wish to offer the slightest opposition to this Bill; and without expressing any opinion as to whether the Bill should or should not apply generally to all India, he should be glad if it were understood that, in assenting to the introduction of the Bill, he did not pledge himself on the question as to whether the Bill should have a larger or narrower application. One reason for hesitation would be that, if the Bill were passed by that Council, and subsequently modifications for one of the Presidencies were required, they could not be made by a local Legislature.

MR. HARINGTON said there could be no doubt that every Honorable Member would be perfectly free, when the Bill was introduced, to discuss the principle of it, and the expediency of legislating on the subject for all India in this Council. The present was merely a Motion for leave to bring in the Bill.

The Motion was put and agreed to.

CONFINEMENT OF PRISONERS (NATIVE STATES.)

The Honorable MR. HARINGTON introduced the Bill for the amendment of the Law relating to the confinement of prisoners convicted of offences in Native States, and moved that it be referred to a Select Committee. He said that this Bill had already been published by the authority of the Governor-General in Council, under one of the rules for the conduct of business in the Council. The object of it was to consolidate and amend the law relating to the confinement of prisoners convicted of offences in Native States. The laws proposed to be consolidated and amended were Act XVIII of 1843, and Act V of 1847. The former Act applied only to the offences of Thuggee and Dacoity, and of belonging to a gang of Thugs and Dacoits. It was considered advisable that its provisions should be extended to the crime of Suttee (burning alive), and to the crime of Sumadh (burying alive); and that the Governor-General in Council should have power to extend the provisions of the Act to any other offences, its extension to which might be deemed by him desirable. The Bill contained provisions to that effect. The Native States in alliance with the British Government, acting in concert with the British Government, were making efforts to suppress the inhuman and barbarous practice of burning native females alive on the death of their husbands, or of those with whom they had lived as wives; and it was thought that the success of the measures which had been adopted with this view, as well as to put a stop to the practice of burying wives alive, would be materially provided for if the persons who were convicted of

the offence were allowed to undergo the imprisonment to which they were sentenced within the British Territories. He believed it would be found, that the Bill contained ample provisions to secure that the authority which it gave should be exercised only after a full and careful investigation before a properly constituted tribunal.

The Motion was put and agreed to.

MERCHANT SEAMEN.

The Honorable Mr. Harington introduced the Bill to amend Act I of 1859 (for the amendment of the Law relating to Merchant Seamen), and moved that it be referred to a Select Committee. He said that Act I of 1859, which this Bill proposed to amend, empowered any Local Government to order an investigation into the conduct of any Master or Mate to whom such Government might have granted a certificate of competency or service, if it had reasons to believe that, either from incompetency or misconduct, such Master or Mate was unfit to discharge his duties. But, as the law now stood, only the Local Government which granted the certificate could order such investigation, wherever the misconduct to be enquired into might have taken place. An instance had recently occurred showing the practical inconvenience of this restriction, and the necessity that existed for some modification of the Law. The master of a vessel holding a certificate from the Government of Bengal took his vessel to Bombay. A complaint of misconduct having been made against the Master on his arrival at Bombay, the Government of Bombay ordered an investigation; but being advised that it had no jurisdiction it abstained from passing any order in the case. There appeared no good reason why, in such a case, the Local Government within whose territories the Master or Mate complained against happened to be, at the time the complaint was preferred, should not be empowered to order an investigation, and on proof of incompetency or misconduct, showing such Master or Mate to be unfit to discharge his duties, to suspend the certificate held by him, although such certificate might have been granted by some other Local Government. The object of the present Bill was to give such power. Since this Bill was published a communication had been received from the Straits' Settlement, in which the Governor proposed a further amendment of Act I of 1859. The Governor said:—"On the 14th "November 1859 I submitted for consideration of the Legislative Council "a petition from certain native ship-owners, praying for a modification of the "provisions of Act I of 1859 in favor of small country vessels sailing from the "Straits' Settlement. I then pointed out the prejudicial effect upon the interests "of the Petitioners likely to be occasioned by the operation of Clause 13, "unless the coasting vessels manned by natives, and employed in carrying on our "trade in the Archipelago, might be considered as Home Trade Ships. At "present, absurd as it may appear, the Commander of one of these vessels may

"be deemed qualified to take charge of his ship from this to Kurrachee, and yet "he is prohibited from retaining the command if she is ordered to make a "coasting voyage along the Eastern Coast of the Malayan Peninsula, or to visit "one of the neighbouring Islands, only a few hours' sail from the Port." If the Council allowed the Bill to go to a Select Committee, he (Mr. Harington) proposed to refer to the Committee the communication from the Governor of the Straits' Settlement, with a view to their considering the further amendment of the law proposed therein.

The Motion was put and agreed to.

RECORDERS' AND SMALL CAUSE COURTS (BRITISH BURMAH.)

The Honorable Mr. Harington introduced the Bill to constitute Recorders' Courts for the Towns of Akyab, Rangoon, and Moulmein, in British Burmah; and to establish Courts of Small Causes in the said Towns, and moved that it be referred to a Select Committee. He said that this Bill had been published by the authority of the Governor-General in Council, under the rule for the conduct of business in the Council to which he had referred before. The object of the Bill was to give effect to that part of the Resolution of the Government of India, dated the 31st January last, relating to the administration of British Burmah, which declared that, instead of a Judicial Commissioner for the whole Territory as had been proposed, there should be established at Rangoon and Moulmein a Court to be presided over by a Barrister or Advocate of not less than five years' standing; with full powers of Civil and Criminal jurisdiction, analogous to the powers now exercised by the Recorders of Prince of Wales' Island and Singapore, with exception to the power of trying cases in which European British subjects were charged with capital offences. The Bill went somewhat beyond the Resolution, inasmuch as it empowered the Governor-General in Council to establish a similar Court to that mentioned in the Resolution at Akyab also. The Town of Akyab already possessed a very large European community, and carried on a considerable export and import trade; and although a Court such as that proposed might not be immediately required, there could be no doubt that, at no distant date, it would be wanted; and it was as well, therefore, to make provision for its establishment in the present Bill.

It was probable that for some time there would not be sufficient Civil and Criminal work to justify the appointment of a Recorder to each of the Courts for the establishment of which provision was made in the Bill; and the Bill accordingly allowed the Governor-General to appoint a single Recorder to any two, or to all three, of these Courts; and in order that no public inconvenience might be experienced during the absence of the Officer who might be the Recorder of more Courts than one, the Bill empowered the Government to appoint a Registrar to each Recorder's Court, who would be the chief Ministerial Officer of the Court, and as such would conduct the current duties, including the filing of plaints, the issue of

notices to defendants, and of summonses to witnesses. The Registrars would also have the powers of Small Cause Court Judges in suits up to a certain amount; and would have power to try other suits of a small value, which might be referred to them by the Recorder. The effect of these provisions would be to relieve the Recorder of a good deal of work which might very well be performed, under his general supervision, by Officers receiving a smaller salary; and to give him time for the disposal of the more important cases brought before him: they would also afford a speedy means of obtaining redress in cases of a small amount, and generally of a simple character, which was very desirable. As already noticed, the Recorder would have no power to try Europeans charged with capital offences. These cases would continue to be committed, as at present, to the High Court at Calcutta. In all other cases occurring within the limits of his jurisdiction, the Recorder would have the powers of a Sessions Judge as defined in the Code of Criminal Procedure. There would be no appeal from his orders; but it would be in his discretion to reserve points of law for the opinion of the High Court at Calcutta, and in Criminal Cases the Advocate General might certify that, in his judgment, there was an error in the decision of a point or points of law decided by the Recorder, or that a point of law which had been decided by the Recorder should be further considered by the High Court.

The Motion was put and agreed to.

EMPLOYMENT, &c., OF PEONS IN CIVIL COURTS (N. W. P.)

The Honorable Mr. Harington introduced the Bill to consolidate and amend the Law relating to the employment and remuneration of Peons for the service and execution of Civil Process in the Courts of the North-Western Provinces of the Presidency of Fort William in Bengal, and moved that it be referred to a Select Committee. He said that the Code of Civil Procedure declared that "every "process required to be issued under the Code should be served at the expense of "the party at whose instance it was issued, unless otherwise specially directed by "the Court; and that the sum required to defray the costs of such service should "be paid into the Court before the process was issued, within a period to be fixed "by the Court issuing the process." But the Code contained no rules for the appointment of the Peons of the Civil Courts; for regulating the charges for such service; or for the remuneration of the Peons employed on this duty. This Bill would amend the law which regulated the appointment and remuneration of the persons employed to serve the processes of the Civil Courts, so far as regarded the North-Western Provinces; leaving the other Local Governments to adopt any regulations on the subject which they thought proper. Under the present Regulations, the Nazirs of the Civil Courts were allowed to appropriate to their own use, in addition to any fixed salaries received by them, one-fourth of the subsistence or diet money deposited for the service or execution of every process; the remaining three-fourths being paid to the Peon employed to serve

or execute the process. The provision of law under which this appropriation took place applied originally only to the Nazirs of the Zillah Courts; but it had been extended by subsequent enactments to all the subordinate Civil Courts. The effect of the provision had been, not only to raise the emoluments of the Nazirs of the Civil Courts generally much beyond what, looking to the position of these Officers and the nature of their duties, might be considered an adequate remuneration for their services and responsibilities; but frequently to give the Nazirs, in the Courts of the Moonsiffs, larger allowances than were received by the Moonsiffs under whom they were employed. This had led to abuses from which, there could be no doubt, the character of the Courts in which they had been practised had suffered. The Bill provided for the payment of the Nazirs by fixed salaries, or by fees. It also provided that, when the Peons received fixed salaries, the sums paid into Court for the service of processes should be formed into a fund, out of which the salaries of the Peons would be paid. When the Peons were remunerated by fees, three-fourths of the money paid as above would be given to the Peons employed to serve the process; and the remaining one-fourth carried to the credit of Government, to cover any charges to which the Government might be put in connection with the Department. Any surplus from this source, or from the fund before mentioned, would be at the disposal of the Local Government; and was proposed to be applied by such Government, subject to the approval of the Governor-General in Council, to the improvement of the administration of Civil Justice in the North-Western Provinces.

The Motion was put and agreed to.

RULES FOR THE CONDUCT OF BUSINESS.

The Honorable Mr. Harington moved that the Honorable Mr. Erskine be added to the Select Committee appointed to consider all proposals to alter or amend the Rules for the conduct of business.

The Motion was put and agreed to.

The Honorable Mr. Harington moved that certain correspondence between the Secretary of State and the Government of India, relative to the Rules for the conduct of business, be referred to the said Committee; and that the Committee be requested to revise the said Rules, and to propose any modifications thereof which they might consider necessary.

The Motion was put and agreed to.

EMIGRATION (SEYCHELLES.)

The Honorable Mr. Harington moved that the Bill relating to Emigration to the British Colonial Dependency of Seychelles be referred to a Select Com-

mittee, consisting of the Honorable Mr. Erskine, the Honorable Mr. Ellis, and the Mover; and that the Select Committee be instructed to make their report in a fortnight.

The Motion was put and agreed to.

COURTS OF REQUESTS (STRAITS' SETTLEMENT) AND WHIPPING BILLS.

The Honorable Mr. Harington moved that the Honorable Mr. Erskine and the Honorable Mr. Ellis be added to the Select Committee on the Bill to enlarge the jurisdiction of the Courts of Requests in the Settlement of Prince of Wales' Island, Singapore, and Malacca; and to the Select Committee on the Bill to authorize the punishment of whipping in certain cases.

The Motion was put and agreed to.

REGISTRATION OF ASSURANCES, EXECUTION OF MOFUSSIL PROCESS, AND RELIGIOUS ENDOWMENTS BILLS.

The Honorable Mr. Harington moved that the Honorable Mr. Ellis be added to the Select Committee on the Bill to provide for the Registration of Assurances; to the Select Committee on the Bill to extend Act XXIII of 1840 (for executing within the local limits of the jurisdiction of Her Majesty's Courts legal process issued by authorities in the Mofussil); and to the Select Committee on the Bill to enable the Government to divest itself of the management of Religious Endowments.

The Motion was put and agreed to.

The following Select Committees were named:—

On the Bill for the amendment of the Law relating to the confinement of Prisoners convicted of offences in Native States—the Honorable Messrs. Harington and Ellis, and Rajah Deo Narain Singh.

On the Bill to amend Act I of 1859 (for the amendment of the Law relating to Merchant Seamen)—the Honorable Messrs. Harington, Erskine, and Fitzwilliam.

On the Bill to constitute Recorder's Courts for the Towns of Akyab, Rangoon, and Moulmein, in British Burmah; and to establish Courts of Small Causes in the said Towns—the Honorable Messrs. Harington, Erskine, and Ellis.

On the Bill to consolidate and amend the Law relating to the employment and remuneration of Peons for the service and execution of Civil Process in the

Courts of the North-Western Provinces of the Presidency of Fort William in Bengal—the Honorable Messrs. Harington and Ellis, and Rajah Deo Narain Singh.

The Council adjourned.

M. WYLIE,
Deputy Secy. to the Govt. of India,
Home Department.

CALCUTTA,
The 5th November 1862.

Abstract of the Proceedings of the Council of the Governor-General of India assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic. C. 67.

THE Council met at Government House, on Wednesday, the 12th November 1862.

PRESENT:

His Excellency the Viceroy and Governor-General of India, *Presiding.*
His Honor the Lieutenant-Governor of Bengal.
Major-General the Hon'ble Sir R. Napier, K. C. B.
The Hon'ble H. B. Harington.
The Hon'ble W. Grey.
The Hon'ble H. Sumner Maine.
The Hon'ble C. J. Erskine.
The Hon'ble W. S. Fitzwilliam.
The Hon'ble D. Cowie.
The Hon'ble Rajah Deo Narain Singh Bahadoor.
The Hon'ble Rajah Dinkar Rao Rugonauth Moontazim Bahadoor.
The Hon'ble R. S. Ellis, C. B.
The Hon'ble A. A. Roberts, C. B.

The Hon'ble MR. ROBERTS took the Oath of Allegiance and the Oath that he would faithfully discharge the duties of his Office.

CIVIL PROCEDURE CODE AMENDMENT.

The Hon'ble MR. HARINGTON moved for leave to bring in a Bill to amend the Code of Civil Procedure. He said that Section XXIII of Act XXIII of 1861 provided for appeals to the Sudder Court being heard by Courts consisting of at least two Judges, and Section 386 of the Code of Civil Procedure declared that, the term Sudder Court should, when that Code was extended to any Non-Regulation Provinces, include the highest Civil Courts of Appeal. But no provision was made for the case of such Courts consisting (as was almost invariably the case) of a single Judge, and a doubt had therefore arisen, as to the power of such Courts to exercise the jurisdiction of the Sudder Court, when that jurisdiction could only be exercised by a bench consisting of two or more Judges. The present Bill would remove that doubt. A similar provision had already been made in respect of the Code of Criminal Procedure. A Section had been added to the Bill to prevent the legality of decisions or orders already passed by the Judges of the highest Civil Courts of Appeal in the Non-Regulation Provinces being questioned on the ground that they had been passed by single Judges.

The Motion was put and agreed to.

STRAITS' SETTLEMENT POLICE BILL.

The Hon'ble MR. HARINGTON moved for leave to bring in a Bill to amend the law for regulating the Police in the several Stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca. He said that this Bill had been prepared in consequence of a representation from the Governor of the Straits' Settlement, of the inconvenience there experienced from no law existing to authorize the enlistment of the Police Force for a stated period, and from the omission of the Straits' Settlement from certain provisions of the Police Act (XLVIII of 1860) which gave power over Coffee Houses, Boarding Houses, and the like. Those Sections, as originally drawn, had included the Straits' Settlement, and he (Mr. Harington) had been unable to discover why that Settlement had subsequently been omitted. The Governor appeared to have stated good and sufficient reasons for the extension of those provisions to the Stations under his Government. With regard to the other point, no such law as that asked for existed in the Presidency Towns, or, so far as he (Mr. Harington) was aware, in the United Kingdom. But the Governor had pointed out the peculiarities of the circumstances to be dealt with. In the Presidency Towns the rate of pay was sufficient to induce men enlisting in the Police to remain, and, when any retired, there was no difficulty in filling their places. But in the Straits' Settlement the Commissioners of Police complained of the constant changes that were taking place, and which rendered nugatory their efforts to keep the Police Force in an efficient state. The Governor noticed that, in the Colony of Hong Kong, it had been necessary to adopt a law requiring the Officers of Police to enlist for five years, and prohibiting retirement at an earlier period except in certain circumstances. The Governor considered that great advantage would result from a similar enactment in the Straits' Settlement, and the first two Sections of the present Bill had been framed with a view to a modification of the law in the direction recommended by the Governor.

The Motion was put and agreed to.

SUBORDINATE MEDICAL OFFICERS' WIDOWS' AND ORPHANS' FUND.

The Hon'ble the LIEUTENANT-GOVERNOR said that, as this Bill had not been circulated in its amended form, he would postpone his motion for its passing till the next Meeting.

The Council adjourned.

M. WYLIE,
Deputy Secy. to Govt. of India,
Home Department.

CALCUTTA,
The 12th November 1862.

Abstract of the Proceedings of the Council of the Governor-General of India assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 *and* 25 *Vic.* C. 67.

THE Council met at Government House, on Wednesday, the 19th November 1862

PRESENT:

His Excellency the Viceroy and Governor-General of India, *Presiding.*
His Honor the Lieutenant-Governor of Bengal.
Major-General the Hon'ble Sir R. Napier, K. C. B.
The Hon'ble H. B. Harington.
The Hon'ble W. Grey.
The Hon'ble H. Sumner Maine.
The Hon'ble C. J. Erskine.
The Hon'ble W. S. Fitzwilliam.
The Hon'ble D. Cowie.
The Hon'ble Rajah Deo Narain Singh Bahadoor.
The Hon'ble Rajah Dinkar Rao Rugonauth Moontazim Bahadoor.
The Hon'ble R. S. Ellis, C. B.
The Hon'ble A. A. Roberts, C. B.

EMIGRATION (SEYCHELLES.)

The Hon'ble MR. HARINGTON presented the Report of the Select Committee on the Bill relating to Emigration to the British Colonial Dependency of Seychelles.

CUSTOMS DUTIES.

The Hon'ble MR. HARINGTON introduced the Bill to amend Act XI of 1862 (to amend the Duties of Customs on Goods imported and exported by Sea), and moved that it be referred to a Select Committee, with instructions to report in two weeks

The Motion was put and agreed to.

CIVIL PROCEDURE, &c. (BRITISH BURMAH).

The Hon'ble MR. HARINGTON introduced the Bill to define the jurisdiction, and to regulate the Procedure of the Courts of Civil Judicature in British

Burmah, and to provide for the extension of certain Acts to the said Territory, and moved that it be referred to a Select Committee, with instructions to report in six weeks. He stated that this Bill related only to British Burmah, and that it had already been seen and approved by the Chief Commissioner there. The period of six weeks therefore appeared to be sufficient for the Report of the Select Committee.

The Motion was put and agreed to.

APPEALS TO THE PRIVY COUNCIL (NON-REGULATION PROVINCES).

The Hon'ble MR. HARINGTON introduced the Bill to regulate the admission of Appeals to Her Majesty in Council from certain Judgments and Orders in Provinces not subject to the General Regulations, and moved that it be referred to a Select Committee, with instructions to report in six weeks. He said that this Bill introduced no new principle, but merely extended to Non-Regulation Provinces the practice already in force in other parts of India, and the period he had named would therefore be sufficient for the consideration of the Bill.

The Motion was put and agreed to.

SUBORDINATE MEDICAL OFFICERS' WIDOWS' AND ORPHANS' FUND.

The Hon'ble the LIEUTENANT-GOVERNOR of Bengal moved that the Report of the Select Committee on the Bill to provide for the dissolution of the Subordinate Medical Officers' Widows' and Orphans' Fund, and the distribution of the Funds belonging thereto, be taken into consideration.

The Motion was put and agreed to.

The Hon'ble the LIEUTENANT-GOVERNOR also moved that the Bill as settled by the Select Committee be passed.

The Motion was put and agreed to.

WHIPPING AND RELIGIOUS ENDOWMENTS BILLS.

The Hon'ble the LIEUTENANT-GOVERNOR of Bengal moved that the Hon'ble Mr. Roberts be added to the Select Committees on the Bill to authorize the Punishment of Whipping in certain cases, and the Bill to enable the Government to divest itself of the management of Religious Endowments.

The Motion was put and agreed to.

RECOVERY OF RENTS (NORTH-WESTERN PROVINCES); REGISTRATION OF ASSURANCES; PARTITION OF ESTATES (NORTH-WESTERN PROVINCES); AND EMPLOYMENT, &c., OF PEONS IN CIVIL COURTS (NORTH-WESTERN PROVINCES).

The Hon'ble Mr. HARINGTON moved that the Hon'ble Mr Roberts be added to the Select Committees on the Bill to amend Act X 1859 of (to amend the law relating to the Recovery of Rent in the Presidency of Fort William in Bengal) so far as it relates to the Territories under the Government of the Lieutenant-Governor of the North-Western Provinces, the Bill to provide for the Registration of Assurances; the Bill to Consolidate and Amend the law relating to the partition of Estates paying Revenue to Government in the North-Western Provinces; and the Bill to Consolidate and Amend the law relating to the employment and remuneration of peons for the service and execution of Civil Process in the Courts of the North-Western Provinces of the Presidency of Fort William in Bengal.

The Motion was put and agreed to.

The following Select Committees were named—

On the Bill to amend Act XI of 1862 (to amend the Duties of Customs on Goods imported and exported by Sea).—The Hon'ble Messrs. Harington, Cowie, Fitzwilliam, and Ellis.

On the Bill to define the jurisdiction and to regulate the Procedure of the Courts of Civil Judicature in British Burmah, and to provide for the extension of certain Acts to the said Territory.—The Hon'ble Messrs. Harington, Erskine, and Ellis.

On the Bill to regulate the admission of Appeals to Her Majesty in Council from certain judgments and orders in Provinces not subject to the General Regulations.—The Hon'ble Messrs. Harington, Erskine, and Roberts.

The Council adjourned.

M. WYLIE,
Deputy Secy. to Govt. of India,
Home Department.

CALCUTTA,
The 19th November 1862.

Abstract of the Proceedings of the Council of the Governor-General of India assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic. C. 67.

THE Council met at Government House, on Wednesday, the 26th November 1862.

PRESENT:

His Excellency the Viceroy and Governor-General of India, *Presiding.*
His Honor the Lieutenant-Governor of Bengal.
Major-General the Hon'ble Sir R. Napier, K. C. B.
The Hon'ble H. B Harington
The Hon'ble H. Sumner Maine.
The Hon'ble C. J. Erskine.
The Hon'ble W. S. Fitzwilliam.
The Hon'ble D. Cowie.
The Hon'ble Rajah Deo Narain Singh Bahadoor.
The Hon'ble Rajah Dinkar Rao Rugonauth Moontazim Bahadoor.
The Hon'ble R. S. Ellis, C. B.
The Hon'ble A. A. Roberts, C. B.

ABKAREE REVENUE LAW AMENDMENT.

The Hon'ble MR. HARINGTON moved for leave to bring in a Bill to amend Act XXI of 1856 (to consolidate and amend the Law relating to the Abkaree Revenue of Fort William in Bengal), and Act XXIII of 1860 (to amend the said Act XXI of 1856). He said that the object of this Bill was to place Spirits manufactured in this country, and not adapted to human consumption, on the same footing as similar Spirits under the Customs Duties Bill lately introduced. The Duty would be 10 per cent *ad valorem*, instead of the high rate per gallon which was now charged. The Bill also provided against frauds on the Revenue.

The motion was put and agreed to.

WORKS OF PUBLIC UTILITY BY PRIVATE PERSONS OR COMPANIES.

The Hon'ble MR. HARINGTON introduced the Bill to provide for taking land for Works of Public Utility to be constructed by Private Persons or Companies, and for regulating the construction and use of Works on land so taken, and moved

that it be referred to a Select Committee. He stated that, in order to meet a difficulty which had been suggested by the Hon'ble Mr. Erskine when leave was moved for to bring in this Bill, provision would be made for the Local Governments making bye-laws, not inconsistent with the general provisions of the Bill, for giving effect to it, according to the peculiar circumstances of their Territories.

The Hon'ble Mr. Erskine said that, since he had made his former remarks on this Bill, he had taken an opportunity of reading it, and he willingly conceded that the Bill bore no marks of a desire to fetter Local Officers by details, or to limit their powers. It was not his intention to oppose the Bill, for he felt, as all the Council must, sympathy with its object. There were reasons in favor of regulating the encouragement of public enterprises by a general Bill, providing a simple Code of Procedure, giving to the Works of Public Companies the character and rights of Public Works, and securing their dedication to public purposes. But there might be objections elsewhere, as in the Bengal Government, which had a Bill before the Committee of its Council; and in Bombay, where the Committee of the Council had already reported, and he should be glad therefore if the local Governments had an opportunity to be heard. There were some Clauses of the Bill which were very important, and to which he might direct attention. In the first part of the Bill, there were several Sections hardly fit for an enactment. They neither enlarged nor curtailed powers that already existed. But it might be desirable, for the benefit of persons at a distance, to make the Bill as complete as possible, and, if so, it might be desirable to add other provisions to it. Opinions might differ as to the extent to which the Bill should go. If lines of communication were sanctioned, it was necessary to provide for private interests, between the intervening points, giving way to the main object. But in the case of Jetties, Quays, and Gas Works, where it was not certain that the works might not as well be made in one place as another, there should be full inquiry, not only as between the Company and the Public, but also as between the Company and individuals whose interests were affected. Section V provided that a preliminary Survey might be authorized on a preliminary statement only, and this would authorize persons to enter on lands with the privileges of public servants, whom, under the Penal Code, it was unlawful to resist, while the persons so authorized were not amenable to Government discipline. This was a very large power to be exercised by Local Governments (the Commissioners of Provinces for instance) in such cases as Surveys of Mines. Then Section IX authorized the Government after three months to declare a work provisionally registered. In other countries formidable processes had to be gone through to arrive at such a stage. He had no wish to embarrass promoters of public undertakings by technicalities, but here was no provision for inquiry into the rights of third parties, nor any provision for taking evidence. Yet the preliminary registration might be made final if the Government chose. The Bill also authorized the Government to give land of its own, or land which it had purchased for the purpose; and the Companies were not to be liable for the value of such land unless made so under the Conditions imposed on them by Government.

Were all the heads of Local Governments to have this authority? He would not enter into the question whether this Council had power thus to authorize grants of public property, but would ask if every Commissioner was to have the power contemplated. Section XXXIV raised the question whether Government were to determine what rights of way and other easements existed; but probably it was only intended that where such rights existed, Government should have power to order in what manner they should be secured. The power of making bye-laws under Section XLI was larger than the powers granted under the Railway Act. But as the penalty only extended to 50 Rupees, it was doubtful if the sanction of the Governor-General in Council should be made necessary. That sanction as provided in Section XLIV, however, appeared to be justly required. With reference to Section XLV, prohibiting alienations of the property of Companies, he doubted if it might not unnecessarily tie up their hands and interfere with their power of obtaining loans. These were some of the points which he thought required mature consideration.

The Hon'ble Rajah DINKAR RAO said that, in his opinion, if the land were a grant, or hereditarily cultivated, the Government, in case the holder of it did not prefer to take the price in money, should give him in exchange, besides the price of his building, if there were any, another piece of land of the value of that taken. To the owner of a house a site, if required, might be given in addition to the price of the building. Wells and buildings for the convenience of travellers should be added to the works mentioned in Section II of this Bill. The Punch should be either three or five as the case might be. A provision should also be made that the Officers of the Government should give their attention fully to the religious buildings.

The Hon'ble the LIEUTENANT-GOVERNOR said, that a Bill for enabling Government to give its assistance to projects for making lines of communication had been introduced into the Bengal Council, and when its principle was considered, it was suggested that the measure might be extended to other undertakings. The Select Committee, however, to whom the Bill was referred, had found so much difficulty in the matter, that they were prepared, as he (the Lieutenant-Governor) understood, to report against the extension of the measure. There were therefore those who would doubt the expediency of so wide a measure as the present Bill. As however, the subject had been taken up in this Council, the Bengal Council would not proceed with it. He agreed with what the Hon'ble Mr. Harington had stated in moving for leave to bring in this Bill, that it was not intended by Parliament that the Supreme Legislature here should, except under special circumstances, legislate on subjects within the competency of Local Legislatures. With reference to this Bill, it was open to the objection that it vested in all the Local Executive Governments, all the powers that in England could be exercised by Parliament alone. Without saying that Parliamentary control, and Select Committees of Parliament, provided the best arrangement possible, it was doubtful if we

should go to the other extreme, when the power we conferred was to be exercised by a single person without responsible advisers. It was well known that, even in Parliament, plausible projects were sanctioned, which unjustly invaded private rights, and some check should be provided against the same kind of thing here. It might be necessary that the head of the Local Government should be bound to submit the projects presented to him to some kind of Board or Committee of responsible advisers. For the rest, he concurred generally in what had fallen from the Honorable Mr. Erskine.

The Hon'ble Mr. Maine said that, although this Bill had been drawn by persons very conversant with the subject, some details might have to be reconsidered, and it might be necessary to curtail, in some measure, Section II. As to the principle on which the Supreme Council should legislate, it had been correctly stated by the Hon'ble Mr. Harington, that no subject should be taken up if it were within the competency of Local Legislatures, unless there were some strong and special reasons, and in this case all the Council appeared to be agreed that such reasons existed. The Works that were contemplated by the Bill would be executed chiefly by English Capital, and the knowledge in England of the Indian Administration was not great. If this matter were left to Local Legislatures, doubts might arise at Home of their power to legislate to the full extent required. Some of the greatest losses English Capitalists had sustained, had arisen from their trusting to subordinate authorities, which proved not to have the power to give the privileges they had attempted to confer. Many of the powers in this Bill, certainly might be given by a Local Legislature; but it was desirable to have a consolidated system of Rules; and Capitalists accustomed to meet with difficulties elsewhere, would here find sufficient to guide them in the whole course of their undertakings.

The Hon'ble Mr. Harington said that he was gratified to find that the Lieutenant-Governor concurred in his opinion of the expediency of the Supreme Council legislating in this matter. The Council were indebted to the Hon'ble Mr. Erskine for the care and attention he had devoted to the Bill, and for the suggestions he had made. He (Mr. Harington), would not now follow him through them all, but would assure him that the whole of them should be carefully considered in Committee. And as the Bill would be published for the usual period, it could be considered by the Local Governments, whose suggestions or objections would be submitted to the Council. With respect to the scope of the Bill, it was doubtful if Section II did not go too far. But it was thought better not to draw the Bill, in the first instance, in too limited a form. It was only permissive in its character, and the Local Governments would select such projects only as were of public importance and benefit. As to the sanction of the Governor-General to the bye-laws, it might suffice to provide for the sanction of the Local Governments, if such were the wish of those Governments. There might be difficulty in giving effect to the suggestion of Rajah Dinkar Rao, but it was worthy of serious consideration.

The Hon'ble SIR R. NAPIER said that he thought the suggestions of the Hon'ble Mr. Erskine deserved much consideration, especially in reference to the protection of private rights. And considering the devoted attachment of the Natives to their hereditary landed rights, he thought that every effort should be made, as far as possible, to give effect to the suggestion of Rajah Dinkar Rao.

The Motion was put and agreed to.

STRAITS' SETTLEMENT POLICE BILL.

The Hon'ble MR. HARINGTON introduced the Bill to amend the Law for regulating the Police of the several Stations of the Settlement of Prince of Wales' Island, Singapore and Malacca, and moved that it be referred to a Select Committee, with instructions to report in six weeks.

The Hon'ble the LIEUTENANT-GOVERNOR said that he had no doubt of the propriety of giving the Magistrates in the Straits the powers that were exercised in the Presidency Towns over Punch-houses and the like, but he doubted as to the Sections which provided that the members of the Police Force should be enrolled for definite periods, and should be liable to heavy penalties if they left the Force earlier. The only reason stated for this enactment seemed to be, that the pay of the Police was not such as to induce men to continue in it; but the objection to the provision was, that enforced service was bad service, and he did not see why a provision of this kind, which had not been adopted in other parts of India, should be made for the Straits. In effect, it added to the Penal Code a provision as to abandonment of service. If this were the object, it were better to extend it to the whole body of Police throughout India.

The Hon'ble MR. HARINGTON said that the penalties were taken from the existing Police Act, in which they were provided for resigning without notice. There did not appear to be any more objection to requiring a man to enlist in the Police for a definite period, than there was to requiring Soldiers so to enlist. With respect to the pay, it might not be desirable nor possible to increase it, but the Section could be considered in Committee.

The Motion was put and agreed to.

EMIGRATION (SEYCHELLES.)

The Hon'ble MR. HARINGTON moved that the Report of the Select Committee on the Bill relating to Emigration to the British Colonial Dependency of Seychelles be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. HARINGTON proposed that the Bill as settled by the Select Committee be passed.

The Motion was put and agreed to.

CUSTOMS LAW CONSOLIDATION.

The Hon'ble MR. ERSKINE moved that the amended Bill to consolidate and amend the laws relating to the administration of the Department of Sea Customs in India be referred back to a Select Committee, with instructions to report in three weeks, after considering the suggestions made by the several Local Governments and the Chambers of Commerce, since the former Report of the Select Committee, and the Bill as amended, were published. He said that the Bill as amended by the Select Committee had been published and circulated, and the opinions and suggestions of the Local Governments had since been received. He hoped to have been able to propose a series of amendments, in accordance with the views thus submitted to the Council; but it was found that they would be so numerous that it would be better to have the Bill referred back to a Committee, and reprinted by them in a form showing the alterations. He hoped that this would not occasion any delay.

The Motion was put and agreed to.

The following Select Committees were named:—

On the Bill to provide for taking land for Works of Public Utility to be constructed by private Persons or Companies, and for regulating the construction and use of Works on land so taken—The Hon'ble Messrs. Erskine, Ellis, Roberts, and the Mover.

On the Bill to amend the law for regulating the Police of the several Stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca—The Hon'ble Messrs. Erskine, Fitzwilliam, Cowie, Ellis, and the Mover.

On the consolidated Customs Bill—The Hon'ble Messrs. Harington, Fitzwilliam, Cowie, Ellis, and the Mover.

The Council adjourned.

M. WYLIE,
Deputy Secy. to the Govt. of India,
Home Department.

CALCUTTA,
The 26th November, 1862.

Abstract of the Proceedings of the Council of the Governor-General of India assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., C. 67.

THE Council met at Government House, on Wednesday, the 3rd December 1862.

PRESENT:

His Excellency the Viceroy and Governor-General of India, *Presiding.*
His Honor the Lieutenant-Governor of Bengal.
Major-General the Hon'ble Sir R. Napier, K. C. B.
The Hon'ble H. Sumner Maine.
The Hon'ble C. J. Erskine.
The Hon'ble W. S. Fitzwilliam.
The Hon'ble D. Cowie.
The Hon'ble Rajah Deo Narain Singh Bahadoor.
The Hon'ble Rajah Dinkar Rao Rugonauth Moontazim Bahadoor
The Hon'ble R. S. Ellis, C. B.
The Hon'ble A. A. Roberts, C. B.

RULES FOR THE CONDUCT OF BUSINESS.

His Excellency the PRESIDENT presented the Report of the Select Committee appointed to consider all proposals to alter and amend the Rules for the Conduct of Business. His Excellency said, the Report was founded on the correspondence with the Secretary of State, which had been laid before the Council. The alterations made by the Committee in the Rules were not very material. Their object was to bring the Rules into closer conformity to the Indian Councils' Act, under which it was not the intention of Parliament that there should be a Legislative Council separate and distinct from the Ordinary Council of the Governor-General. It was hardly consistent with the design of Parliament, that the Rules should provide for definite Sessions or Sittings of the Council for passing Rules and Regulations, and imply that there would be definite periods when it would be in a state of activity, and definite periods in which it would be in abeyance. It was no doubt convenient that there should be power vested in the Governor-General to summon the Council when special occasion should arise, and the Rule in that respect would not be altered. A short time ago there had been an instance of the necessity of this power. When the High Court was established, it was found that some Legislative action was necessary to enable the Court to exercise its functions. He (the Governor-General), in adjourning the

Council in April, had carefully guarded himself against the use of any expressions that implied a prorogation, and therefore there had been no technical difficulty in the way of his summoning the Council for the purpose in view. In the amended Rules the term "Session" would be omitted altogether, but he (the Governor-General) thought it right to mention, that there was no intention of departing from the existing practice of calling the Council together only at times when it would be most convenient for the additional Members to attend. It would be arranged that in the intermediate periods the Legislative measures required by the Government should be prepared for the consideration of the Council. Another alteration in the Rules had reference to the publication of Bills when the Council was not assembled. It was important that some provision of this kind should be made, for as Bills had to be published for three months after their introduction, there would be great inconvenience if no Bill could be published till leave had been given to bring it in, and it had been introduced. But as the Rule stood, it appeared to give an advantage to Ordinary Members of Council over the other Members. The authority to authorize the publication of the Bill, without a motion being made for leave to bring it in, would therefore be reserved to the Governor-General alone, but the Council might rest assured that the publication of no Bill would be so authorized if it was of such a character that the Council would be likely to refuse leave to bring it in. With these observations he laid the Report on the Table.

CUSTOMS DUTIES BILL.

The Hon'ble MR. MAINE, in the absence of the Hon'ble Mr. Harington, presented the Report of the Select Committee on the Bill to amend Act XI of 1862 (to alter the Duties of Customs on Goods imported or exported by Sea).

CIVIL PROCEDURE CODE AMENDMENT.

The Hon'ble MR. MAINE, in the absence of the Hon'ble Mr. Harington, requested leave to postpone the introduction of the Bill to amend the Code of Civil Procedure.

The Council adjourned.

M. WYLIE,
Deputy Secy. to the Govt. of India,
Home Department.

CALCUTTA,
The 3rd December 1862.

Abstract of the Proceedings of the Council of the Governor-General of India assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., C. 67.

THE Council met at Government House, on Wednesday, the 10th December 1862.

PRESENT :

His Excellency the Viceroy and Governor-General of India, *Presiding.*
Major-General the Hon'ble Sir R. Napier, K. C. B.
The Hon'ble H. B. Harington.
The Hon'ble H. Sumner Maine.
The Hon'ble C. J. Erskine.
The Hon'ble W. S. Fitzwilliam.
The Hon'ble D. Cowie.
The Hon'ble Rajah Deo Narain Singh Bahadoor.
The Hon'ble Rajah Dinkar Rao Rugonauth Moontazim Bahadoor.
The Hon'ble R. S. Ellis, C. B.
The Hon'ble A. A. Roberts, C. B.

BREACHES OF CONTRACT.

The Hon'ble MR. MAINE presented the Report of the Select Committee on the Bill relating to Breaches of Contract committed in bad faith.

ARTICLES OF WAR (NATIVE OFFICERS AND SOLDIERS) AMENDMENT BILL.

The Hon'ble MR. MAINE moved for leave to bring in a Bill to amend Act XXIX of 1861 (to consolidate and amend the Articles of War for the government of the Native Officers and Soldiers in Her Majesty's Indian Army). He said that the Bill was intended to remove some doubts and misapprehensions which had arisen in the construction of the Articles of War, which derived their sanction from Act XXIX of 1861. In one Article it was found that the negative "not" had been omitted, and thereby a different meaning to that intended had been conveyed; and doubts had arisen as to a reference in the same Article to certain Commanding Officers, Commanding Detachments, to whom summary powers were intended to be given. These doubts would be removed,

and, at the same time, summary powers would be given to the Commanding Officers of Detachments in situations beyond the Seas, and in cases of critical emergency. In another Article some words were found that kept alive a jurisdiction, in the Bombay Presidency, of Courts Martial, in cases which it was intended should be triable by the Criminal Courts. There were other amendments in matters of detail. The Bill was introduced on the recommendation of the Government of India in the Military Department, and had been approved by His Excellency the Commander-in-Chief, and by the Civil and Military authorities of the Madras and Bombay Presidencies.

The Motion was put and agreed to.

CIVIL PROCEDURE CODE AMENDMENT.

The Hon'ble MR. HARINGTON introduced the Bill to amend the Code of Civil Procedure, and moved that it be referred to a Select Committee, with instructions to report in eight weeks. He stated that that time would suffice for the publication of the Bill.

The Motion was put and agreed to.

CUSTOMS DUTIES BILL.

The Hon'ble MR. HARINGTON moved that the Report of the Select Committee on the Bill to amend Act XI of 1862 (to alter the Duties of Customs on Goods imported and exported by Sea) be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. HARINGTON proposed that the Bill, as settled by the Select Committee, be passed.

The Motion was put and agreed to.

WORKS OF PUBLIC UTILITY BY PRIVATE PERSONS OR COMPANIES

The Hon'ble MR. HARINGTON moved that the Honorable Mr. Fitzwilliam be added to the Select Committee on the Bill to provide for taking Land for Works of Public Utility to be constructed by private persons or Companies, and for regulating the construction and use of Works on land so taken.

The Motion was put and agreed to.

The following Select Committee was named:

On the Bill to amend the Code of Civil Procedure.—The Hon'ble Messrs. Harington, Erskine, and Roberts.

The Council adjourned.

M. WYLIE,
Deputy Secy. to the Govt. of India,
Home Department.

CALCUTTA,
The 10th December, 1862.

Abstract of the Proceedings of the Council of the Governor-General of India assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., C. 67.

THE Council met at Government House, on Wednesday, the 17th December 1862.

PRESENT:

His Excellency the Viceroy and Governor-General of India, *presiding*.
His Honor the Lieutenant-Governor of Bengal.
Major-General the Hon'ble Sir R. Napier, K. C. B.
The Hon'ble H. B. Harington.
The Hon'ble H. Sumner Maine.
The Hon'ble C. J. Erskine.
The Hon'ble W. S. Fitzwilliam.
The Hon'ble D. Cowie.
The Hon'ble Rajah Deo Narain Singh Bahadoor.
The Hon'ble Rajah Dinkar Rao Rugonauth Moontazim Bahadoor.
The Hon'ble R. S. Ellis, C. B.
The Hon'ble A. A. Roberts, C. B.

RULES FOR THE CONDUCT OF BUSINESS.

His Excellency the PRESIDENT moved that the Report of the Select Committee appointed to consider all proposals to alter or amend the Rules for the Conduct of Business, be taken into consideration. His Excellency said that he wished to make a few observations in explanation of this Report and the amendments it proposed in the Rules for the Conduct of Business, as he understood that some misapprehension and mistakes existed as to the intent and effect of the amendments which the Council had recommended to be adopted. Those misapprehensions had not found expression in that Council; but occasions might arise in which it might be necessary to remove public misapprehensions which had not found an echo there, and the present, he considered, was one of those cases. For it was manifest that most serious prejudice to the interests of the country might arise, if mistaken views of measures adopted by that Council, or as to the constitutional position of the Council to which Parliament had delegated the duty of legislating for India, were permitted to exist: more especially if misapprehension existed as to the motives and intentions of those to whom the duty of Government was entrusted. He considered that it was the more necessary for him to notice the mistakes that had been made, because they appeared

to have arisen from the meagreness and insufficiency of the statement which he had made in laying the Report on the table. But in truth he (the Governor-General) was well aware of the trivial nature of the changes made in the Rules, and he knew also that the other Members of the Council were equally aware of the nature of those changes. It appeared, however, that he had not sufficiently considered that others were ignorant of the real state of the case, nor the temptation to speculate on the relations of the Council which that ignorance presented. The public had been told that this Report was proof of a design, or a foul conspiracy, on the part of the Secretary of State and the Governor-General, to deprive the Council of some part of its privileges, and to curtail its authority. It was difficult to know how to deal with statements of this kind. If he dealt with them seriously, he might be open to the imputation that he had been led into taking undue notice of a piece of harmless pleasantry. But if no notice were taken, his silence might be construed into an assent to the truth of a statement involving charges not lightly to be treated. He felt, therefore, on the whole, that the less objectionable course was to notice the charges. It would be admitted by all candid persons that when the Council, or a Committee of the Council, was engaged in framing or amending Rules for the Conduct of Business, that was not a time when the question as to the best constitution of the Council could be properly raised, or the question whether the constitution given by Parliament was the best that could be framed. Whatever opinion might be formed on those points, the Rules must necessarily be framed in conformity to the constitution as it existed, and not to the constitution as it might be altered. He would enquire what proof there was of a conspiracy between himself, as Governor-General, and the Secretary of State. The first recommendation of the Committee was that the Governor-General should have authority to direct the publication of a Bill, though no vote had been previously taken from the Council on the motion for leave to bring it in. The charge of conspiracy, in respect of this recommendation, rested on the assumption that this power was an innovation, or a departure from the existing practice; and that this innovation or departure from existing practice had been adopted on the recommendation of the Secretary of State. The Council would observe what foundation there was for these assumptions. The question had arisen before the Committee, how Bills should be dealt with when the ordinary sitting of the Council was suspended. The same question had been considered when the Rules were first framed, and the original Rules accordingly provided that a "Bill may be sent to the Secretary "when the Council is not in Session, and the Governor-General in Council may "order its publication, together with the Statement of Objects and Reasons which "accompanies it. In that case it shall not be necessary to move for leave to bring "in the Bill, and if the Bill be afterwards introduced, it shall not be necessary to "publish it again.". Those Rules had been transmitted to the Secretary of State; and, in order to prevent misapprehension, he (the Governor-General) would state that that was done in the ordinary course of business, and before he assumed office. The Secretary of State observed that the Rule which he had read apparently infringed the privileges of the Non-Official Members, and placed them at a disadvantage in relation to the Official Members. The objection was felt to be

perfectly sound, and the inference was, that the Rule ought to be cancelled; but the Committee had to consider what the practical effect of having no Rule of the kind would be. One of the Rules provided that the progress of Bills introduced into the Council should ordinarily be suspended for three months, in order that they might be published. This Rule had been adopted in order that Bills might be circulated and published in all parts of India, and that all the various authorities and inhabitants might have opportunity to represent their objections to every proposed measure; and having regard to the great extent of the country, he (the Governor-General) did not think the period to be excessive, but considered that it ought to be strictly adhered to in all except special cases. But if it were adhered to, and no Bill could be published till leave had been moved for to bring it in; then it would be necessary either to call the Council together at great inconvenience, in order to deal with motions which, in nine cases out of ten, would meet with no objection, or else to adopt the principle that all Bills should be delayed till a Meeting of the Council for general legislation; the result of which would be a postponement of Bills introduced at one sitting till the following year. The Council had therefore thought that, in order to obviate inconvenience to Members and to the public, the Rules for the publication of Bills should be adhered to, but that the publication might be permitted, as before, when the Council were not sitting. The only difference in the new Rule was the substitution of the Governor-General for the Governor-General in Council, and the reason for that was, that it removed the existing anomaly of an advantage to the Official over the Non-Official Members. This Rule, it was supposed, would be less objectionable than the former one, but thanks to the entire accord which existed, and he hoped would always exist, between him and his advisers, the alteration would, in fact, amount to a distinction without a difference. Such was the ground on which the charge of conspiracy had been made in respect of this Rule. Another ground for that charge had been the elimination of the term "Session" from those parts of the Rules in which it occurred. He scarcely understood on what theory the independence of the Council was supposed to be compromised by this change. That theory must imply that the power to prorogue, which existed under some constitutions, was a power reserved in the interest of the body which was subjected to its exercise, so that a body which was always at hand, and may be called together at any time, was less independent than a body that was liable to prorogation! This was a novel doctrine, and it might be asked how it would act in the present Council. In laying the Rules on the table, he (the Governor-General) had adverted to the occasion when the High Court was instituted. If he had been debarred by the Rules of the Council, or by his own act, from calling the Council together, he must have exercised the power vested in him by Section 23 of the Councils' Act, and passed an ordinance to meet the difficulty. That was a power, like every other power entrusted to him by Parliament, which he should exercise whenever he thought it necessary to do so. But he was desirous, as far as possible, of dealing with the legislation of the country only with the help of those Gentlemen whose assistance Parliament had

given him, and whose criticisms and suggestions were always of the greatest possible use. Then, as to publicity being given to the proceedings of the Council, it never yet had been, and he hoped it never would be, his lot to preside over a Government which had not more to gain than to lose by publicity. He was sorry to have thus to trouble the Council with these observations; but it was important to remove the misapprehensions to which he had adverted. If confidence were shaken in that Council, or in the Government, the evil would be far greater than would arise from any measure that either might adopt.

The Hon'ble MR. COWIE said that, irrespectively of the satisfactory explanation which His Excellency had given of the alterations in the Rules, he felt bound to repudiate the charge that he, as an additional Member of the Council, had forfeited his independence by continuing to hold his seat under them. He believed that, under those Rules, he had the right of introducing any measure into the Council, and he believed that it would receive courteous attention and impartial consideration from the President and the Members: Further, he had the right of expressing an opinion, and of voting on every measure which others might bring forward. That was the position which the late Lord Canning had explained, when he did him (Mr. Cowie) the honor of offering him the seat in the Council, and with that position he was content. He had considered that he was only a Member of the Council of the Governor-General for the purpose of making Laws, but he found, from the Despatch of the Secretary of State, that he was a Member of the Council of the Governor-General, and he must express his acknowledgments for the compliment.

The Hon'ble MR. FITZWILLIAM stated his concurrence with the sentiments expressed by the Hon'ble Mr. Cowie.

The Hon'ble MR. HARINGTON said that the Rajah Dinkar Rao had expressed to him his satisfaction with the alterations which it was proposed to make in the Rules, and which he thought would identify the ordinary and the additional Members, and place them on a more equal footing.

The Motion was put and agreed to.

His EXCELLENCY then moved that the amendments proposed by the Select Committee be adopted.

His EXCELLENCY said that, as there was an obscurity in the new Rule 29, he would move that it should stand as follows :—

"*Any Member may move that a Bill which has been amended by the Council be* "*re-published, and if the Council so decide, the President may order the Bill to be* "*re-published for such period as he shall see fit.*"

The Motion was put and agreed to.

BREACHES OF CONTRACT.

The Hon'ble Mr. Maine moved that the Report of the Select Committee on the Bill relating to Breaches of Contract committed in bad faith, be taken into consideration. In making this Motion, he begged to offer a few words on the reasons which had led the Committee to the conclusions of the Report; or, rather, he should perhaps say, on the reasons which had led himself, for it was possible, and indeed probable, that different Members had reached the same conclusions by different routes. It would be seen that, in the Despatch from the Secretary of State for India which was printed with the papers accompanying the Bill, the Secretary of State expressed a hope that the Bill would be withdrawn, and then intimated a doubt whether any legislative interference in commercial transactions, with the view of coercing one of the parties to a contract, could be productive of good. The language of the Secretary of State was not directly imperative, and, on the whole, for various reasons, the Committee thought it their duty to consider the possibility of amending the Bill, and if he individually might avow any other motive besides the wish that a subject of such great importance should meet with full discussion, it would be the desire that no measure introduced by the late Mr. Ritchie should be lightly thrown aside. It would be better first to consider the Bill apart from the objections of the Secretary of State. The Council would remember that Mr. Ritchie introduced it avowedly as a measure of compromise. He inferred, from the language which Mr. Ritchie used in the debate on its introduction, that he would have preferred a Bill like that brought in by the present Lieutenant-Governor of Bengal, a measure, that was to say, making Breaches of Contract criminally punishable, but more general than Mr. Beadon's Bill, which applied only to contracts for the delivery of agricultural produce. The Secretary of State, as was well known, announced his intention of disallowing the first Breach of Contract Bill, and hence Mr. Ritchie was compelled to confine himself to a Bill prescribing a proceeding of a Civil nature in point of form, but of a Criminal nature in respect of the penal consequences incurred by an unsuccessful defendant. He thought, however, it would always be found that, when you were dealing with a distinction so old and so universal as that which separated Criminal law from Civil, it was not possible to mix together the provinces of jurisprudence which lay on either side of the boundary, and that you would be obliged to take up a position on one side of the line or the other. It was his strong impression that, if the Committee had felt there was any use in amending the Bill, it would have emerged in a shape closely resembling that of the measure introduced by the Lieutenant-Governor; for, when they came to the examination of details, and attempted to put the machinery of Mr. Ritchie's Bill into working order, they would have found it defective in one respect, in the omission of provisions for sufficiently full notice to the defendant of the character of the charge brought against him. It would have been contrary to all principle, and, as it struck him, to one's most elementary instincts of justice, to inflict a penalty so severe as hard labour on a man who had not been amply warned, before the trial commenced

that he would be exposed to this consequence if he did not succeed in rebutting the accusation of fraud. No civilized nation, so far as he was aware, had ever relieved an accuser from the duty of giving this warning. A French Act of Accusation was a voluminous history, not only of the alleged offence, but almost of the whole life of the accused, and, in England, until comparatively recently, the law was so anxious that prisoners should come into Court with full preparation, that a large per-centage of persons accused escaped scot-free for want of a precise description of the charge in the indictment. The Committee, therefore, if it had amended the Bill, had two courses open to it. Either it must have compelled the plaintiff, in such a proceeding as the Bill contemplated, to put into the pleadings a full account, with all particulars of mode and time, of the fraud with which he taxed the defendant, or else it must have been provided that, whenever in the course of a Civil Suit for Breach of Contract it became clear that the question of fraud would be raised, the proceedings should at once be interrupted, and the accused bidden to attend on a subsequent day, with his means of disproof, if he had any. In the first case, the inquiry would differ only in name from a Criminal trial; in the second, it would be a Criminal investigation added on to a Civil suit. He had attempted to show that legislation on that subject would necessarily, in the long run, turn out to be Criminal legislation, because it explained the stress laid by the Committee on the passage in the Despatch, in which the Secretary of State objected to any inquiry into the motives of the defendant, and into the reasonableness or otherwise of his excuses for non-performance. It was scarcely necessary to point out to the Council that such an inquiry was, in fact, the great characteristic which distinguished the administration of Criminal Law from the administration of Civil Law. In the assessment of Civil penalties, no excuse could be listened to, if the suit were for Breach of Contract, the only question was, whether the contract had been performed: if it had not been performed, though even through the most unmerited misfortune, the full consequences of non-performance must follow without abatement. But, under Criminal Law, whether an act drew down a penalty at all depended entirely on the motive with which it had been done; and he ventured to say that there was not one act of which Criminal Law took cognizance, which, if the motives of the actor shaped themselves in a particular way, or lent themselves to a particular excuse, might not become justifiable and even laudable. For those reasons the Council would not, he thought, fail to come to the conclusion that, when the Secretary of State objected to an enquiry into motives, he objected not only to Mr. Ritchie's Bill in its present shape, but in any shape it could possibly assume. Then came the question, how far beyond this did the objections of the Secretary of State extend. He understood the Secretary of State to object to all general Criminal legislation against Breaches of Contract But comparing the language of this Despatch with that of former Despatches on the same subject, he did not understand him to object to particular legislation. He meant by particular legislation, legislation directed to the enforcement, by the authority of the Magistrate, of a certain class of contracts, or

of contracts between persons belonging to a particular class. There were, he believed, samples of such legislation in the jurisprudence of every country. In England there was the Statute, or rather the series of Statutes, regulating the relations between employers and labourers, and the Statute which applied to Merchant Seamen. In India they had the Calcutta Artificers' Act, and there had been many Laws and Regulations of that kind which had expired or had been repealed. In all this legislation, there seemed to be little question of motive. Breaches of Contract by persons falling under these Statutes did not appear to be criminally punished on account of their peculiar immorality, for it would be absurd to maintain that a Breach of Contract by a mariner is more immoral than by any body else; but, as he supposed, the legislator took his stand on the interests of society, and declared that society could not afford to allow these particular contracts to be lightly broken. Of course, such legislation must always be sparingly resorted to, and only on the clearest grounds; both because it was exceptional, and because it rested on a ground (the interest of society), which had always furnished the greatest number of pretexts for tyranny. But still, in spite of all its disadvantages, he confessed that he infinitely preferred particular to general legislation on these subjects. Of course, general legislation had advantages of its own. If you wish to conceal your true object, you can do it much more easily by general legislation than by particular legislation. If you wish to avail yourself of broad general propositions about the duty of punishing fraud, wherever it may be detected; propositions which it was extremely invidious to deny, and extremely dangerous to affirm, you can call them to your aid much more effectually when you are meditating general legislation. But in particular legislation you have this compensating advantage, that you know where you are going to. You can measure the consequences of the steps you take, and you can retrace them if they disappoint you. If he felt himself called upon, which he did not, to raise objections to Mr. Ritchie's attempt at general legislation, he should rest his doubts less on the grounds urged by the Secretary of State, than on grounds which it was not easy to describe in precise language. He should deprecate such legislation less on account of results he foresaw, than on account of results which he did not and could not foresee. Knowing, as they all did, that all the modern progress of society seemed to be intimately connected with the completest freedom of Contract, and in some way almost mysteriously dependent on it, he should shrink from tampering with so powerful an instrument of civilisation; and if he were unfortunately compelled to propose a measure like Mr. Ritchie's, he should feel like a physician employing a remedy which might indeed cure the disease, but which might also revolutionise the constitution. There were no such dangers as these attending particular legislation. In that, as you must always be aware that the measures you contemplate are irregular and exceptional, you are likely to assure yourself before you interfere, that a case has been established for interference. When you do make up your mind to use your remedy, you can exactly proportion it to the evil which has to be removed; and as the sphere of its operations would probably be limited, you can judge and observe of its working. It was not for him to say what legislation of

the kind he had been describing was called for by the circumstances of particular localities in India, or by the practices and habits of particular classes; but if exceptional measures had to be resorted to, and they were of that nature, he should think that they could secure what, no doubt, was one of the most efficient means of moral education—the exact performance of contracts—without disturbing principles and distinctions which had been established for so many centuries, and which seemed to strike root the deeper as the world grew older.

The Hon'ble Mr. Erskine said that the Report bore his signature with those of others, and it was not, of course, his wish to oppose its adoption. At the same time, as the recommendation of the Report was that the Bill to which it related should be withdrawn; and as he had concurred, not many months ago, with a majority of the Council in thinking that the Bill ought to be sent to a Select Committee, in order that it might be made the foundation of an enactment, it seemed right to take this opportunity of stating shortly the circumstances under which he now acquiesced in a different course, and the extent to which his own views remained unchanged. The discretion of the Committee, in dealing with this Bill, and the position of the Council in regard to it, had been affected since the last discussion of the measure, by the receipt of the Despatch to which reference had already been made, from the Secretary of State. The tenor of that Despatch was such that it had not only materially affected the deliberations of the Committee, but had, of necessity, determined their proposals. Such being the case, it was impossible to make a statement on this subject without alluding to that communication. His allusions to it would be made with a proper respect for the authority from which it emanated. In considering this Despatch it appeared to him that one important point to be ascertained at the outset was, the extent to which it really dealt with the great problem which, in one form or another, had repeatedly during the last two years been discussed by them; and the extent to which it dealt only with one attempt to affect a partial solution of that problem; or in other words, and in spite of the warning they had received against general propositions, how far the arguments of the Despatch were directed against the principle which underlay all the special measures and projects of law that had been before them, and how far those arguments were confined, so to speak, within the four corners of this particular Bill. Now the principle which lay at the root of the several recent projects for legislation might, as he understood it, be stated in some such words as these:—That acts of fraud—or if the technical definition of "fraud" were objected to, of bad faith—done to the known wrongful injury of others,—that such acts so committed in Breach of a Contract may rightly be punished as Criminal offences, like acts of a similar kind committed in the making of a contract, or on other such occasions. This seemed to be the broad principle which lay at the root of the whole question, and only if it were assented to would the next consideration arise—whether it was desirable and prudent to make legislative provision for the punishment of such acts as offences. Only after both of these

questions had been decided affirmatively would it be necessary to give attention to subsidiary points relating to the special form of Bill required for this purpose and the various details of such Bill. Indeed, were it not contrary to recent experience to do so, one might have assumed that willingness to enter on the minor details implied acquiescence in the larger principles. In reading carefully through this Despatch, then, in order to determine what portions of it must be treated as objections to the general principle just stated, and what portions were merely objections to provisions peculiar to this Bill, it seemed to him that, three portions only treated directly of the former; namely, the 5th paragraph, a portion of the 9th, and the concluding portion of the last; and even these did not seem to be very decided. The 5th paragraph, for instance, merely seemed to raise a doubt whether that which it described as the principle of the Bill could be universally applied in its full extension, and whether there was any precedent for such an application of it. But it was obvious to remark (without enquiring how far the supporters of the Bill would go in applying it) that there are many principles which are confessedly just and right, and which, nevertheless, cannot in practice be applied, everywhere and at all times, without exception. And further, with all respect for the observation which had fallen from his Hon'ble friend (Mr. Maine), if no principle could be true unless it had been embodied in some existing Code, there would be an end of improvements in legislation. The next paragraph to which he had referred was paragraph 9. That seemed at its commencement to suggest merely the great difficulty of defining "fraud" or "bad faith," and of determining questions regarding it. There was no doubt as to the difficulty. Had the question not been one of the most difficult in Criminal jurisprudence, it would, no doubt, have been satisfactorily settled long ere this. But the Council, he believed, would not recognise the mere difficulty of any attempt as an adequate reason for not making it. A passage followed in the same paragraph, which had been quoted by the Select Committee, but to which his Hon'ble friend, he thought, had given a construction wider than it should be made to bear. The words of the Committee are, that they thought the enquiry there referred to imperatively required by the principle of the Bill before them; and rightly. But it did not appear that the Secretary of State, in objecting to enquiries into motives, was alluding to enquiries in Criminal cases for which the Bill did not provide. The only other paragraph to which he had alluded was the latter portion of the last. In regard to this he might observe, that it was expressed in such guarded terms that he thought, if only a fair latitude of construction were allowed, hardly any Member of the Council would hesitate to adopt the words as his own. It could hardly be said, therefore, that the arguments in the Despatch, as affecting the broad question before them, were either direct or emphatic. They were numerous and decided, no doubt, as regarded this particular Bill and its details. Most of them are recapitulated in the first portion of the concluding paragraph. But he believed he might say, with truth, that all of them had been urged on the attention of the Council before they decided that the Bill should be referred to a Committee. If, however, the Select Committee had not in this way many new arguments to consider, they had at least the assurance that these arguments had been held to be fatal to this Bill,

or any modification of it, by an authority without whose concurrence it could not, even if passed, continue to be law. For this reason they concluded that it would be useless to proceed with the Bill; and for this reason—and this reason only—he had concurred in that recommendation, although his own views remained unaltered. In the course of this discussion they had been reminded that mere general assertions of principles were apt to be of little avail. There were occasions, however, on which it was most important that general principles should be openly re-asserted. This seemed to be such an occasion. During their former discussion it had been suggested that it was contrary to the spirit of modern legislation to increase the severity of the Criminal Law. He had then ventured to dissent from that view. It was, indeed, the tendency of recent legislation to mitigate the severity of punishment; but it did not seem to be equally its tendency to diminish the number of offences. On the contrary, as he formerly urged, when the standard of morals rose among a people, the number of acts was increased which the public conscience condemned, and which the public feeling would support the law in punishing. As commerce expanded, the danger was more clearly felt of offences against credit, against commercial morality, and against general trade; and that this was felt to be so practically in England might be inferred from recent Acts relating to frauds, to breaches of trust, and to reckless insolvents. His views on these matters were of little importance; but his allusion to them had elicited an expression of concurrence from their lamented colleague, Mr. Ritchie, whose opinions had a value altogether their own. And another Member of the Council, now no longer present, Mr. Laing, had taken the same opportunity of expressing strongly his sense of the importance of this question in its relation to the moral feelings of the people. He had urged that it was unwise to import into India nice legal distinctions, which served rather to puzzle than to enlighten or satisfy the consciences of simple men. And he had quoted in illustration of this argument an instance to which His Honor the Lieutenant-Governor likewise had more than once referred, that the law ought not to lay down that it was right to punish fraud if you could prove that the intention to defraud originated five minutes before a man signed a contract, but wrong so to punish if he could prove or raise a presumption that the intention originated five minutes later. Mr. Laing urged that subtle distinctions of this kind should not be encouraged, but that more weight should be given to the broad maxims of common sense and natural equity. This seemed to be just. It was important that the voice of the Law on these points should be clear; that its provisions should be brought, as far as possible, and as fast as possible, to support the plain rules of honesty; and that it should be felt to restrain all men from immoral practices in connection with Civil contracts, and to hold no man free to recede from his compact to the known wrongful injury of his neighbour, merely because he could not abide by it without some loss or inconvenience to himself. These were some of the considerations which made him, while acquiescing under the circumstances in the Report of the Select Committe, desirous to make it clear that his own views remained unchanged. He trusted that it was so also with others; for an indication that the convictions and desires of the Council still tended in the

direction of an amendment of the general law, would be advantageous in more ways than one.

The Hon'ble Rajah DINKAR RAO said, that he had already objected to this Bill when it was introduced. The subject in the second paragraph of the Select Committee's Report (relative to the Despatch of the Secretary of State) was of great importance. There was no necessity for such a separate Act as the present, and it was desirable to withdraw this Bill as recommended by the Committee.

The Hon'ble MR. COWIE said that the Report of the Select Committee on the Contract Bill was, with great propriety, drawn up in such a way that it could be conscientiously signed by all five Members; but as one of them he might be allowed to record his sincere regret at the very narrow ground to which the Secretary of State's Despatch had limited the Council in that matter, and he expressed a hope that the Executive Government would, by argument and reasoning, prevent that Despatch being treated as final. He avowed himself an advocate of a Contract Law which should treat a fraudulent contractor, whether he be the employer or the employé, with the same stern justice which modern legislation now awarded to the fraudulent bankrupt and the fraudulent Trustee. An esteemed friend who knew much more of India than he ever should himself, had told him that such a Contract Law could not be worked in the Mofussil, because the Courts were not competent; in other words, that juvenile Magistrates and aged Sudder Ameens were not equal to the nice task of discriminating between intentional fraud and accidental or unintentional liability, or of defining where accident ended and Criminal fraud commenced. If that were so, which he, without Mofussil experience, was not competent to say, he thought the community of India, in calling for a Contract Law, were entitled, at the same time, to demand a great improvement in the Courts which would have to administer that law: and he hoped the earnest attention of the Executive Government would be given to those two wants. Such measures would not only conduce to the material prosperity of the country, but would add to the ease and comfort with which it might be governed.

The Hon'ble MR. ROBERTS agreed with the Select Committee that, in the face of the Despatch of 9th June last from the Secretary of State for India, it would be neither for the public interest, nor for the dignity of the Council, to proceed with a project of Law which, if passed, would certainly be annulled in a few months; but he was of opinion that the Select Committee should have attempted to determine the exact effect of that Despatch on their own deliberations, and on the deliberations of the Council. There was no question of the power of Her Majesty to disallow Laws made by the Governor-General in Council, but it was extremely doubtful whether the Indian Councils' Act permitted of interference by the Secretary of State with the deliberations of the Council on questions pending before them. In the present case leave had been obtained, under the Rules for the Conduct of Business, to introduce the Bill to which the

Secretary of State had objected; the Bill had been referred to a Select Committee, and was coming under discussion when, almost *in limine*, the Secretary of State expressed his disapproval of the principle of the measure, and requested that it might be withdrawn. That which had been done in the present case might be repeated on any other occasion, and, practically, the power of legislating for India would be transferred from this country to England. This did not appear to have been the intention of Parliament: the restoration of the power of legislation to the Minor Presidencies; the extension of the provisions of the Act for making Laws and Regulations to the Bengal Division of the Presidency of Fort William; and the nomination of Non-Official Members, European and Native, to the Councils of the Subordinate Governments, and also to the Council of the Governor-General for purposes of general legislation, all seemed to indicate that it was the intention of Parliament to give full scope to legislation in India; to allow projects of law to originate out here; to permit free discussion and deliberation to those who, from local knowledge and experience, were the best judges of the fitness and applicability of the measures proposed; to leave it to them to decide whether such measures should be brought on the Statute Book or no, and simply to reserve to the Sovereign the privilege of disallowing any law if deemed necessary to do so. In his opinion there was nothing in the Indian Councils' Act which permitted interference on the part of the Secretary of State with measures under discussion, and he (Mr Roberts) thought that this point of privilege should be first determined, and that, in the mean time, the Bill for Breaches of Contract in bad faith should remain in abeyance. He proposed to move an amendment to that effect.

The Hon'ble Mr. Fitzwilliam said, looking to the Report of the Select Committee, he agreed with them that, under the circumstances, it would be better, both for the public interest and the dignity of the Council, that the Bill should be withdrawn. He regretted, however, to find that the principle upon which the Bill was based was likely to be abandoned. Laws providing for the Criminal punishment of fraudulent Breaches of Contract occupied a prominent place in the judicial system of every commercial country in the world. Why then, he would ask, is India to be deprived of them? Trading transactions could not be carried on with safety without mutual confidence. Surely then, it could be only just to all parties to a contract that they should be protected against fraud on either side. His own experience in commercial transactions in various parts of the world had convinced him of the advantages of such Laws, and he did not hesitate to express the opinion that it was to the interest of both Natives and Europeans that such Laws should be enacted. It was not a class question; it was one in which every resident in India was deeply interested. Without some protection of this kind he believed that the great industrial interests of this country could not expect the assistance of European capital for their extension or development. He had heard it objected that such a Contract Law, as provided in the Bill before us, might be used as an instrument of oppression. That could not be the fault of the law. If such was the case, it must be the fault of the administration of the law. And if those who had the

administration in their hands were not competent for their duties, then he agreed with his Honorable friend, Mr. Cowie, that it was the duty of the Government to appoint officers who were so. The Honorable and learned Member, Mr. Maine, not only saw difficulties in the way of legislation upon this subject, but he thought that there were still greater unseen difficulties to be contended with. He thought we had better deal with those before us ; they were perhaps formidable enough. And he again repeated his opinion that a Contract Law, or, at any rate, the provision of Criminal punishment for fraudulent Breaches of Contract, was absolutely necessary for the interests of those who embarked capital or supplied labour for the promotion or development of the industrial interests of India. Without it European and Native capital would, he believed, be found unavailing.

The Hon'ble Mr. Ellis said that he did not share in the regret expressed by the Hon'ble Members who had spoken, at the withdrawal of this Bill, because he was opposed to the Bill itself, and should have voted against its becoming law. The objects which it had been supposed would have been secured by the Bill were an improvement in public morality in regard to the fulfilment of agreements and contracts, and the protection of European capital in India, and thereby the encouragement of European settlers in the interior of India. If he thought either or both of these objects likely to be secured by the Bill, he should share in the regret expressed at its withdrawal, but as he did not think the Bill likely to promote these important objects, he was satisfied that its withdrawal would not be an evil. He did not think that the large masses of the lower classes against which this measure was directed would be improved morally by it, because they would not be slow to discover that this Bill, under the disguise of a Civil law, contained in regard to themselves Criminal punishments; and they would perceive that the measure afforded protection, not to those classes which recent enquiry had shown required protection, but to a class numerically small yet really powerful and self-reliant, who had already the legitimate influence due to their wealth and intelligence. To that class which the Bill in question, and all recent legislation on the subject of Breaches of Contract, were intended to assist, he did not think that the Bill would have proved beneficial. He thought that there were other methods than legislation by which any unfortunate class differences might best be set at rest. And although it might be contended that the latitude of the provisions of the Bill would not have been made use of injuriously, he had not so good an opinion of human nature as to believe that men could be entrusted generally with great power without danger ; and he did believe that this Bill, if passed into law, would have afforded unscrupulous men means of oppression. It was for that reason that he rejoiced at its withdrawal, and that he did not share in the expression of hope that legislation upon this subject would be speedily re-attempted. In making these remarks he begged that he might not be misunderstood. He valued as much as any one the introduction of European capital, and Europeans of education and energy, into the interior of all parts of India. He had seen districts which were in a languid condition gain new life by the arrival of independent

European settlers. Waste lands were speedily brought under cultivation, distant parts of the district were brought into relation with the more civilized central towns and stations; faults in the administration were pointed out and corrected, and the prosperity of the ryots kept pace with the rapid fortune of the settlers. These independent Europeans were able greatly to assist the Government Officials, for they acquired information regarding the administration which was often concealed from the Officials themselves. But it was because he had seen this, and because the laws, as at present existing, had been found sufficient to meet all the reasonable wants of this important class, that he would deprecate legislation on this subject, and the introduction of a measure such as that under discussion, for general application to all India. If any particular portion of India required special legislation, and he did not pretend to pronounce upon that point, it could be no reason for general legislation; which, to be necessary, and in the form taken by the successive measures which had been attempted and failed, must be based on the supposition that Natives in their dealings under agreement are generally dishonest, and required to be coerced into honesty by extraordinary laws. Another objection that he had to this Bill, and this had been, he believed, considered a recommendation of the measure, was, that it was drawn on the model of Act XIII of 1859 (the Artificers' Act.) There had been much difference of opinion as to whether this Act had been of beneficial effect or not. He was disposed to think that it had not proved of much use in that part of India with which he was best acquainted. He held in his hand a return of the operations of that Act during one year, and from this it would appear that, in the districts of the Madras Presidency, the number of cases disposed of under that law had not averaged more than forty in each district. But in two of these districts where the decisions had been most numerous; namely, 297 in one district, and 115 in another, it had been ascertained that the provisions of the Act and its interpretation had led to acts of serious oppression. The Inspector General of Police, who had had the best opportunity of becoming acquainted with the working and practical effects of this Act, had called the attention of the Government to the necessity of a more careful superintendence of the working of Act XIII of 1859. To him (Mr. Ellis), therefore, the fact that the Bill which was about to be withdrawn was framed on the model of Act XIII of 1859 was no recommendation. He must repeat, that the laws at present in force appeared to him to afford sufficient remedies for the evils of Breaches of Contract, and he did not think sufficient ground had been shown for additional legislation on this subject. It was a remarkable circumstance that, in the south of India, in the face of rapidly rising cotton prices, contracts for the supply of cotton during the past year had been honestly fulfilled in the midst of great temptation, and that there had been no call for special legislation in consequence of the general bad faith of the Native producers, or their failure to fulfil contracts which left them only moderate profits, as compared to the large profits realized by purchasers. It was because he did not believe that this law was generally required, and certainly not in that part of India with which he was best acquainted, that he could not regret the withdrawal of this Bill. In

support of his opinion as regards the south of India he begged leave to read an extract from a letter he had received from a gentleman who, for many years, had entered into large contracts with Natives for the supply of various kinds of agricultural produce :—" In Southern India we have no reason to com-
" plain of the provisions of the law now existing for the fulfilment of con-
" tracts, particularly those relating to the delivery of produce. The practice
" here is to contract, not at a price determined years previous to the time
" of delivery, but at the ruling rates at the time when the produce is ready for
" delivery. This prevents serious misunderstanding between the parties, and
" is an effectual protection to the interests of the two parties to the contract—the
" producer has no inducement to attempt to evade his engagement, and the pur-
" chaser obtains the produce for which he pays the ruling price of the day, which
" must leave a reasonable profit since others engaged in the same trade are ready
" purchasers at such price. It would not be safe to enact a law by which the needy
" ryot would be exposed to be tempted to enter into engagements which might,
" without any fault of his, deprive him of his liberty ; injure the best interest of his
" family ; and to some extent be a social evil. Contractors in India must act with
" the same caution and reserve in their dealings as others similarly situated all over
" the world ; they must look to the solvency of the party with whom they deal. If
" for reasons best known to themselves, they depart from this wholesome practice
" they do of their free accord run certain risks for the purpose of obtaining certain
" objects : their chances are fully balanced, and they must be prepared to stand the
" consequences."

The Lieutenant-Governor of Bengal desired, as one of the Select Committee, to make a few observations as to the part he had taken in the discussion which had terminated in this Report; a document which he had signed, and in which, so far as it went, he entirely concurred. The origin of the Bill which it was now proposed to withdraw might be traced to the recorded remarks of the late Governor-General, Lord Canning, on the Report of the Bengal Indigo Commission in 1860. While concurring with the late Lieutenant-Governor in deprecating exceptional legislation, that is, such legislation as would confer on the Indigo Planters greater advantages than are given to other classes in making contracts, or in punishment of the breach of them, His Lordship suggested that, as the fraudulent Breach of Contracts by artificers or labourers, and of contracts for public works, was already cognizable by law, and punishable with fine and imprisonment, the same law might be extended to contracts for the delivery of agricultural produce; not Indigo alone, but all agricultural produce, when the Breach of Contract is fraudulent, and when an advance has been accepted. Early in 1861, on Lord Canning's return to the Presidency, the question was carefully and anxiously discussed, and it was then resolved that a project of law for the punishment of fraudulent Breach of agricultural Contracts should be brought before the Council in its legislative capacity. It fell to his (Mr. Beadon's) lot to frame and bring in the Bill; and though from the first he was in-

clined to agree in what he understood to be Mr. Erskine's view, that the case could best be met by the addition of a Clause to the Penal Code, defining the offence of fraudulent Breach of Contract, and making it punishable in the ordinary way, yet, on the whole, it was deemed expedient to shape the measure, as nearly as might be, on the model of the Act already in the Statute Book for the punishment of Breach of Contract by workmen; an Act, it might be added, which all were agreed could not by any force or ingenuity of construction be made to reach Indigo Contracts. In bringing this Bill before the Legislative Council, he distinctly stated that he was by no means partial to the particular form in which it was drawn, and he proposed that it should be referred to a Select Committee to be considered and reported on before publication, so that the Council might determine, in the first instance, the form in which it was most expedient that the Bill should appear. All that he asked the Council to do was (to quote the very words he made use of), " to affirm the principle, that persons in the condition of labourers, who freely received a *bonâ fide* advance of money, and in consideration thereof voluntarily contracted to cultivate or deliver produce, if they wilfully and without reasonable excuse failed to perform their engagements, and either persisted in their refusal, or would not pay such damages as the Magistrate might think reasonable, should be liable to punishment." It was important to remark that the Bill among other things provided that the contracts, the breach of which it was proposed to make penal, must be in writing, duly witnessed and stamped; that a copy of them must be deposited in the Magistrate's Office within a month after execution; and that no Breach of Contract should be punishable if committed after the lapse of a year from the date of contract. The second of these conditions was admitted to be an imperfect sub-stitute for registration, but it was hoped that, as a general measure for the registration of deeds was then before the Council, this defect might be corrected before the Bill became law. The Council affirmed the principle of the Bill by a large majority, and the Bill was referred to a Select Committee; but before the Committee could present a Report, there came a Despatch from the Secretary of State condemning the measure, partly because it dealt with Breaches of Civil Contract in a Criminal way, and partly on account of its exceptional character. The Bill was accordingly abandoned. But Lord Canning's Government was so convinced of the necessity for providing, in some way or other, for the punishment of fraudulent Breaches of Contract, that, acting on a suggestion of the Chief Justice, it determined to make another attempt at legislation on the subject, an attempt such as would not be open to the objections brought against the former project, and would, it was hoped, meet with the approval of the Home Government. The result of this determination was Mr. Ritchie's Bill to which the present Report refers, a Bill which, as Mr. Maine had justly observed, was a compromise, and admitted to be such both by the author of the Bill and those who concurred with him in bringing it forward The scope and object of Mr. Ritchie's Bill was to make punishable all Breaches of Contract committed in bad faith, provided a consideration of any kind had been receiv-

ed ; and it empowered the Civil Courts, in an action for Breach of Contract, to commit the defendant to jail on a charge of fraud, there to maintain himself, or, if maintained by the Government, to be kept to hard labour. The Bill was, in fact, based to a certain extent on the bankruptcy law under which a dishonest debtor may be imprisoned without the intervention of the Criminal Courts. He (Mr. Beadon) supported the introduction of that Bill, not because he entirely agreed in it, but because he approved of the general principle on which it was based ; namely, that fraudulent Breaches of Contract should somehow or other be made punishable ; but he pointed out at the time, as other Members of the Council also did, the objections that might be taken to the very wide scope of the Bill, and he urged that it should be confined to contracts made in consideration of an advance of cash. On the same occasion he again expressed a preference for some alteration of the Penal Code, whereby fraud of this description might be made directly punishable by a Magistrate. He was now free to admit that the Bill was reasonably open to most of the objections made to it by the Secretary of State. He quite agreed that it would not be expedient to punish criminally the breach of such contracts as those referred to in the 4th paragraph of the Despatch. He admitted that it would be wrong and dangerous to empower all the Civil Courts, or any great number of them, to pass Criminal sentence on the defendant in a Civil action for Breach of Contract, especially without putting him on his trial. And he did not doubt that the definition of "bad faith," which the comprehensive character of Mr. Ritchie's Bill had rendered necessary, would give rise to extreme difficulty in dealing practically with such cases. Further, he could heartily concur, in a general way, in the doubts of the Secretary of State as to whether legislative interference in commercial transactions, with a view to coerce one of the parties to a contract, could be productive of good; but he was not the less firmly convinced that, when once a contract had been freely made in consideration of a sum of money advanced for a specific purpose, and when it had been publicly acknowledged by both parties and registered at the time, the fraudulent breach of such a contract was as justly the subject of penal legislation as fraudulent Breach of Trust, or the crime defined in the Penal Code under the head of cheating. He was quite of opinion, however, that any attempt at further legislation in this country would be unwise, and he might say, undignified, until something could be done to remove the strongly expressed objections of the Home Government, and convince it that the true interests of India and its people absolutely demand a law to punish fraud of this kind. As charged with the Executive Government of Bengal, it might become his duty to represent to the Governor-General in Council the necessity for such legislation ; but as matters now stood, he did not consider that he was at liberty to take any other action in the matter. In offering these remarks he begged that they might be considered as applying only to the general question of criminally punishing fraudulent Breaches of Contract made in consideration of an advance, and not as in any way touching the special question of fraudulent Breaches of Contract by artificers and workmen. Contracts of this kind were provided for by a law which was already in force in the Presidency Towns, which had been extended partially to

the Mofussil, and which might be further so extended at the discretion of the Executive Government.

The Hon'ble Mr. Harington said upon the constitutional question which had been raised in the course of the debate, he deemed it proper to make a few remarks. This seemed the more necessary in reference to what had fallen from his Honorable friend, Mr. Roberts, who considered that it was the duty of the Select Committee on Mr. Ritchie's Bill to have determined the effect of the Despatch lately received from the Secretary of State on the Bill. The right of this Council to pass any law it pleased, except certain laws which were expressly excluded from its jurisdiction, admitted of no doubt. But it must be borne in mind that no law passed by this Council had any validity until it had received the assent of the Governor-General, who might reserve any law passed by the Council for the signification of Her Majesty's pleasure thereon ; and that, moreover, any law passed by the Council even though assented to by the Governor-General, would at once become null and void and of no effect in the event of Her Majesty disallowing it. It might be very true that the Indian Councils' Act, to which his Honorable friend Mr. Roberts had alluded, did not expressly authorise the Secretary of State for India to make any objections, or to give any advice in respect to any Bill or project of law before the Council, so long as the Bill or project of law was under the consideration of the Council; but he (Mr. Harington) thought that most Honorable Members would agree with him, that the right to object or advise in respect to any pending Bill was inherent in the Secretary of State for India from the nature of his Office. The Secretary of State had the same opportunities of knowing what Bills were brought before the Council which were enjoyed by the public at large ; and if, as in the present instance, he entertained such serious objections to any Bill before the Council as should, in his opinion, prevent the Bill from passing into law, he (Mr. Harington) thought there could be no doubt as to his competency to state his objections to the Bill, and to advise that it should not be proceeded with. This was all that the Secretary of State had done on the present occasion. He had pointed out what appeared to him to be the objections to Mr. Ritchie's Bill, and had expressed a hope that the Bill would be withdrawn. Assuming then, that the course adopted by the Secretary of State was quite constitutional, on which point he, Mr. Harington, must repeat he thought there could be no doubt, it certainly did appear to him, and he believed most Honorable Members would be of the same opinion, that the Secretary of State had best consulted the public interest, and what was due to the Council, by communicating to the Council the objections which he entertained to Mr. Ritchie's Bill, and expressing the hope already mentioned; instead of waiting until the Bill had become law, and then advising Her Majesty to refuse her assent to it. Of course it was open to the Select Committee to have recommended that the Council should proceed with the Bill notwithstanding the objections taken to it by the Secretary of State, and there was nothing absolutely to prevent the Council from going on with the Bill if they pleased to do so; but he (Mr. Harington) did not think that this would be a wise or expedient course for them to pursue. He con-

sidered that the better course was that which the Select Committee had recommended, and he trusted that the Council would adopt the recommendation, and allow the Bill to be withdrawn. It was not his intention, on the present occasion, to enter into the merits of Mr. Ritchie's Bill. When the Bill was introduced he had expressed himself as strongly opposed both to the principle of the Bill, and to many of its details. He found most of the objections which he had taken to the Bill repeated in the Despatch from the Secretary of state. Other objections were taken to the Bill in that Despatch, which, it must be admitted, were of considerable weight. He (Mr. Harington) would have divided the Council against the introduction of the Bill had there been any chance of his succeeding, but finding that there was a majority against him, he had no alternative but to allow the Bill to go to a Select Committee. With regard to what had fallen from some Honorable Members in favor of the introduction of a Criminal Breach of Contract Law, he would observe that, what they had now to consider was, not whether any new law relating to Breaches of Contract, in the direction of the Bill introduced into the late Legislative Council by His Honor the Lieutenant-Governor of Bengal, or of Mr. Ritchie's Bill, or in some other direction, should be brought in, but whether they should or should not go on with Mr. Ritchie's Bill. He might, however, remark that the Honorable Members, to whom he had just referred, appeared to have overlooked the fact that the Legislature of this country had very recently concluded a complete revision of the Criminal Law of India, and had introduced, as the result of that revision, a very carefully prepared Penal Code. This Code had been more than a quarter of a century under consideration before it became Law, and some of the ablest and most eminent men in India had taken part in its preparation. It must not be supposed that the framers did not carefully consider the subject of Breaches of Contract, and how they should be dealt with. There was evidence indeed that the subject had been most fully considered by them. The framers of the Code had all the information regarding Indigo and other contracts which was possessed by the Council, and the conclusion at which they arrived was expressed in one of their notes, in which they said that they agreed with the great body of jurists in thinking that, in general, a mere Breach of Contract ought not to be an offence, but only to be the subject of a Civil action. They then went on to point out the cases in which an exception might, in their opinion, be properly allowed. This part of the Code might be regarded as falling within the category of particular legislation which his Honorable friend, Mr. Maine, considered was, in certain circumstances, allowable; but the framers of the Indian Penal Code did not deem it right to include within their exceptions cases of the nature of those to which Mr. Ritchie's Bill was intended to apply. The Penal Code had not yet been twelve months in operation. No new circumstances had occurred, since its introduction, to show that it required amendment in so far as it related to Breaches of Contract. It was not stated that there had been any failure of justice in consequence of the provisions relating to such breaches not being sufficiently large or stringent. The Code contained some very strict provisions against the fraudulent alienation of property by persons against whom decrees might be

passed, and others colluding with them in fraud of creditors. These were calculated to be very useful in suits brought to recover damages for Breaches of Contract, and he thought that the penal provisions of the Code went in this respect quite far enough. Then they had lately given to the country a simple Code of Civil Procedure, which put aside all new technicalities, and aimed only at affording to parties in Civil suits speedy and substantial justice. He believed that this Code was giving very general satisfaction, and was working exceedingly well. He heard, not long ago, of a suit having been instituted in the High Court to recover damages for a Breach of Contract. The sum sought to be recovered was large. The suit was brought, heard and decided, and execution of the decree obtained in full, in less than a fortnight. He was told that, under the former system, this suit would have occupied several months. This would show how great had been the reform effected by the introduction of the new Code of Civil Procedure. Then a large number of Small Cause Courts had been established, where suits for Breaches of Contract were most prevalent, and there could be no doubt that these Courts would materially contribute to the speedy and satisfactory determination of such cases. It seemed to him therefore that, instead of proposing fresh legislation, and that too of a novel and exceptional character, they should give the laws which they now possessed a fair trial. He contended that the Penal Code, and the new Code of Civil Procedure, had not yet had a fair trial. It was too soon to judge of their effects. If after a sufficient time had elapsed to admit of an opinion being formed on the subject—really practical, not merely theoretical—objections were found to exist in respect to any part of either Code, and an amendment appeared to be needed, by all means let the amendment be made. Some Honorable Members had alluded, in the course of the debate, to the laws which had been recently passed in England for the punishment of Trustees and Bankrupts who might be guilty of fraud. His Honor the Lieutenant-Governor of Bengal appeared to think that those laws gave power to the Bankruptcy Courts to punish persons proved before them to have been guilty of any fraudulent conduct, but he (Mr. Harington) apprehended that this was not the case; all that the Court could do was to commit the offender for trial before the Court of Session, by which the trial was held with the aid of a jury. He had pointed this out to his Honorable friend Mr. Cowie in some correspondence which he had had with him regarding Mr. Ritchie's Bill. It was in that correspondence that the remark relating to juvenile Magistrates occurred to which Mr. Cowie had referred. If he (Mr. Harington) recollected rightly what he said was, not that some young Magistrates were not competent to the duties which they were now required to discharge, but that it would not be proper to devolve upon these comparatively young and inexperienced officers duties which at home were performed by old and experienced and trained Judges with the aid of a jury. He believed that he had added that a Sessions trial in every case of alleged Breach of Contract in this country would be most vexatious and harrassing to all concerned, and would be almost an impossibility. He could not conclude without expressing the pleasure with which he had listened to the letter which had been read to them by

his Honorable friend Mr. Ellis. His own experience entirely confirmed what had been stated by the writer of the letter.

The Hon'ble RAJAH DEO NARAIN SINGH said that he had not received a copy of the Report, and could not therefore express any opinion on it. But he had already expressed his opinion on the Bill when it was introduced.

The Hon'ble Sir R. NAPIER said that there was but little left for him to say on this question, but as a Member of the Government which introduced the Contract Bill, he was unwilling to let the present Motion pass without remark. The admission which had fallen from his Honorable friend, Mr. Harington, regarding the state of the Civil Courts in the Mofussil within a recent period, afforded the best explanation of the grounds on which Mr. Beadon's Contract Bill was framed. The intention of that Bill was to provide for a class of contracts not within reach of the ordinary Civil Courts. We were informed of individuals being subjected to Breaches of Contract by several thousand persons, for amounts separately so small that even a successful prosecution in a Civil Court could only result in additional loss and expense, but no sufficient number of Civil Courts could possibly be provided to deal with such cases promptly. The immunity from the Civil Courts afforded by the great number of these cases, and the small amount involved in them, gave such temptation to, and facility for, Breaches of Contract, that it appeared necessary to deter persons from committing them by a penal Law. It was objected to such a Law that it would lead to great oppression through the inefficiency of the Magistrates, but we had seen the exercise of summary Laws in the Non-Regulation Provinces without such results. Of course, Magistrates entrusted with summary powers should be subject to the strictest supervision, and gross neglect, or deficiency of judgment, should be very severely dealt with. Summary Laws and prompt administration of justice were much more suited to the character of the people of India than the protracted litigation of Civil Courts. It was notorious in the Upper Provinces how much more the people regard those administrators who give them prompt decisions, even though they may not be invariably faultless, than those who give them the most perfect but long delayed and tardy justice. The object of Mr. Beadon's Bill was to meet the class of Breaches of Contract for which the ordinary Civil Law could not afford a remedy, and in that view he (Sir R. Napier) cordially supported it. But the Bill was not permitted to become Law, and, as stated by Mr. Beadon, the Bill now before the Council was framed by our lamented Colleague, the late Mr. Ritchie, as a compromise. He (Sir R. Napier) could not say whether he should eventually have assented to that Bill or not. Although there were several points in the Bill to which he entertained objections, he had consented to its being sent to a Select Committee, because a Contract Bill was wanted, and he hoped that this one might undergo such alterations as would enable him to support it. Regarding the constitutional question which had been raised, he might observe that it had pleased Her Majesty to invest the Secretary of State with authority over the Government of India, and it was surely better that he should intimate his objections to a mea-

sure, the principle of which he was entirely opposed to, rather than that he should watch in silence the progressive steps of a Bill, and allow it to be matured, with the determination to reverse it as soon as the Government of India should be fully committed to it. Under the present circumstances the decision of the Select Committee appeared to him the best that they could have arrived at.

His Excellency the PRESIDENT said, that he had listened with the greatest interest to the instructive discussion which had taken place, and especially to the important statements made by the Hon'ble Mr. Cowie and the Hon'ble Mr. Fitzwilliam. In his position it would be the height of indiscretion to state any opinion until he saw his way clear to some course of action that would be effective and useful. On the whole, he agreed with the Hon'ble Mr. Maine in his statement of general principles, but he could not entirely concur with Mr. Harington as to the hopelessness of discovering a remedy for the state of things which had been depicted that day. At the same time when it was proposed to depart from that broad line of demarcation which separated Civil from Criminal enactments, they should have strong proof, not merely of the necessity of such a course, but also that they would be supported by public opinion in England. It might be better to deal with particular cases by special enactments, so that they might guard against deviating from the ordinary principles of jurisprudence beyond that which the actual necessity of the case demanded. In this course, however, they must guard against any legislation which might degenerate into class legislation. Whatever mistakes the Council might commit, he believed that they would never forget the broad general principle that every class of Her Majesty's subjects in India had equal claims to their sympathy and consideration. He trusted that the Council would appreciate his motives in refraining from any decided expression of opinion. The Lieutenant-Governor had alluded to Act XIII of 1859, the Artificers Act, and he (the Governor-General) must say that it was a proper subject for consideration whether the operation of that Act might not be extended beyond its present limits. If other special legislation were attempted it should be tentatively and cautiously, and they should first see if the evils complained of could not be overcome by other means. He had such confidence in the good sense of his countrymen, that he was persuaded the European Community would agree that it was better, if existing Laws could possibly achieve the object in view, first to try their operation; but if beyond those Laws, other special legislation was necessary to meet any proved evils, it would be the duty of the Government to endeavour to discover what remedy could be applied. He could not pledge himself that a remedy should be discovered; but he could assuredly say that the Government would not fail from want of a sincere attempt to discover it.

The Hon'ble MR. MAINE, in reference to what had fallen from Mr. Roberts, said, that the Despatch of the Secretary of State was not based upon any special provisions of the Councils' Act, but upon the general power of superintendence over the Government of India entrusted to him by Parliament. Whatever power he had over the Governor-General in Council he could

exercise over the Council as now assembled, and it was surely more convenient that he should state objections which he felt to be fatal to a Bill prior to its passing, than that he should wait till the Bill had passed, and then disallow it.

His Excellency the President said, that there did not appear to be any question of constitutional right involved in this matter. The course of the Secretary of State, in reference to Bills before the Council, simply depended on questions of discretion. He had given no veto to the Bill, but had simply expressed his strong objection to it. Under the Rules of the Council, Bills were published prior to being passed, and it would not be a gracious proceeding in the Secretary of State, if he entertained strong objections to any Bill, to keep them back from the knowledge of the Council, and then to disallow it.

The Hon'ble MR. ROBERTS said that the question had not been raised by him, but was raised by the Report, from which it appeared that some doubt did exist as to the effect of the Despatch on the deliberations of the Council. When that Report came before him, he had referred to the Indian Councils' Act, and so far as he could judge, it appeared that the Secretary of State had exercised a power that was not authorized.

The Motion was put and agreed to.

The Hon'ble MR. MAINE then moved that the recommendation of the Committee be adopted.

The Hon'ble MR. ROBERTS said that he should vote against the Motion.

The Motion was put and agreed to.

HIGH COURT BILL.

The Hon'ble MR. MAINE moved for leave to bring in a Bill to continue in force Act XX of 1862 (to provide for the levy of Fees and Stamp Duties in the High Court of Judicature at Fort William in Bengal; and to suspend the operation of certain Sections of Act VIII of 1859 in the said High Court) till the 1st July 1863. He said that Act XX of 1862 had been passed at the Special Meeting of Council, to which His Excellency had already referred. Its operation would cease on the 31st of December, and as the Government was not yet in possession of the opinions of the Judges as to the provisions of any permanent Act that might be required for the High Court, it was necessary to continue this present temporary Act for a further period of six months. He proposed at the next Meeting of Council, to ask permission to proceed under a suspension of the Rules, so that the Bill might be passed at once.

The Motion was put and agreed to.

MUNICIPAL ASSESSMENT (STRAITS' SETTLEMENT.)

The Hon'ble Mr. Maine moved for leave to bring in a Bill to authorize the extension of the term of Office of the Municipal Commissioners in the Settlement of Prince of Wales' Island, Singapore and Malacca. He said that considerable inconvenience had been experienced in the Straits' Settlement from the Municipal Commissioners being elected only for a period of one year. After some correspondence with the Government of India, the Governor of the Straits was requested to prepare and submit a Bill extending the term of Office to three years, and the Hon'ble the Recorder of Singapore having been good enough to prepare a Bill for the purpose, it had been forwarded to this Government for submission to the Council.

The Motion was put and agreed to.

MARRIAGE BILL.

The Hon'ble Mr. Harington introduced the Bill to provide for the solemnization of Marriages in India of persons professing the Christian Religion, and moved that it be referred to a Select Committee. He said that leave to introduce this Bill was given by the Council in the month of February last. Their late Hon'ble Colleague, Mr. Ritchie, on asking for leave to bring in the Bill, entered into a full explanation of the objects and reasons of the Bill. His remarks had been incorporated in the Statement of Objects and Reasons which had been printed and circulated, and it was unnecessary that he (Mr. Harington) should occupy the time of the Council by recapitulating them now. But a very important addition had been made to the Bill as proposed to be introduced by Mr. Ritchie. This addition, which was contained in Part IV of the Bill as now framed, was intended to meet the cases of the numerous classes of Native Christians who were scattered throughout the Country. He thought there could be no doubt that the previous provisions of the Bill were altogether unsuited to large numbers of these persons, and that some special legislation was necessary in their behalf. It seemed to be generally admitted, that it was impossible for the persons to whom he was referring to comply with the formalities in respect to marriage contained in the existing Law, and it was not pretended that they did comply with them. The consequence had been much irregularity in the solemnization of the marriages of these persons, and there were great doubts as to the legality of some of their marriages. The present Bill would give validity to all marriages, however celebrated, up to the date of the passing of the Bill, and, for the future, it was thought that the part of the Bill to which he was referring would afford to all classes of Native Christians who might choose to avail themselves of the same, a simple, convenient, and inexpensive mode of solemnizing their marriages, and of establishing their marriages when proof might be required either in respect to the succession to property or otherwise. He (Mr. Harington) could not conceal from himself that the part which had been added to the Bill as prepared by Mr. Ritchie, was not free

from difficulty, and some modification might be necessary before the Bill became Law. There was no intention of hurrying on the Bill. The Bill would be published for the usual time, and ample opportunities would thus be afforded to the local Governments, and to all persons interested in the Bill, of making themselves acquainted with its provisions, and of offering any remarks or suggestions that they might think proper.

The Hon'ble Mr. ERSKINE expressed his gratification at hearing that it was not intended to press on this measure without affording full time for expressions of opinion. The subject was one that well deserved the consideration of the Legislature; but it involved many questions of considerable difficulty, and it was desirable that it should be brought distinctly to the notice of the local Governments.

The Hon'ble RAJAH DINKAR RAO said that the objections he had against passing this Bill, and his views respecting it, were as follows:—Section XLIII provides that it should be ascertained whether the persons intending to be married do not stand to each other within the prohibited degrees of consanguinity, and whether they have, or have not, a wife or husband, as the case may be, still living. It was necessary to know these points, and also whether both the parties professed Christianity. For it was often the case that persons on account of famine or quarrels left their homes. Deceit, force, or allurement were also sometimes the means of separating individuals from their relations. All this should be ascertained from the relations of the parties; the statement of the persons intending to be married should not be deemed sufficient proof. The enquiry could not, he (the Rajah) thought, be satisfactorily made by a person in Holy Orders, or by a person licensed to grant certificates of marriage between Native Christians. This task should be entrusted to the local Civil Authority, who should proceed as in cases of kidnapping, abduction, &c. No harm would be done if some delay in the performance of such marriage occurred in making these enquiries; and excitement, if any existed, would also be removed. It was possible that such persons, after the excitement was over, might repent and wish to go back to their relations and request their forgiveness and protection. The natural affection of the relations, even if their religion rendered it impossible to re-admit them into caste, might induce them to provide for their maintenance. It was mentioned in Section XV that the father, mother, or guardian of any party has power to make objection to the marriage. But in case these persons were at a distance, how were they to hear of the intention and come forward within fourteen days, the time allowed by this Bill? The period allowed for enquiry should be allowed to the relations for the purpose mentioned. Care should be taken that no one who, by being a relation, or from his religious feelings, should object to the marriage, although he was not entitled by this Law so to object, should be punished. Mention was made in Section XLIII about the age of the parties, but it was necessary to know whether they were free according to their custom. He thought it would be well that this Bill should be referred to the local Governments in order to ascertain the objections of the Native

community under their respective Governments. It would be said that, on the publication of the Bill in the *Gazette*, any one might raise objections against it. This course might be better, but it seemed to be seldom adopted.

The Hon'ble MR. HARINGTON said that the suggestion made by his Hon'ble friend, Rajah Dinkar Rao, that in addition to the usual publication of the Bill it might be advisable to call the special attention of the local Governments to the Bill, seemed worthy of consideration, and he thought he might promise his Hon'ble friend that his suggestion would be adopted. The remarks made by his Hon'ble friend on some of the Sections of the Bill would be fully considered in Committee.

ABKAREE REVENUE LAW AMENDMENT.

The Hon'ble MR. HARINGTON introduced the Bill to amend Act XXI of 1856, (to consolidate and amend the Law relating to the Abkaree Revenue of Fort William in Bengal), and Act XXIII of 1860 (to amend the said Act XXI of 1856), and moved that it be referred to a Select Committee. He said, in introducing this Bill, he deemed it right to draw attention to the fact that the Bill as framed would apply only to the Presidency of Fort William in Bengal. He had intended to propose that the provisions of the Bill should be made of general application, but after consulting his Honorable friends Mr. Erskine and Mr. Ellis, he had come to the conclusion that it would be better to leave the Governments of Madras and Bombay, which had their own Abkaree Laws, to legislate for themselves, having first obtained the sanction of the Governor-General to their so doing. The previous sanction of the Governor-General would be necessary under the Indian Councils' Act in reference to the character of the legislation. Some addition to the Bill would probably be necessary to admit of the extension of its provisions to the Punjaub and other Non-Regulation Provinces, but this might be considered in Committee.

The LIEUTENANT-GOVERNOR of Bengal enquired if the Bill related to Bengal alone, and if in that case it might not be left to the Bengal Council.

The Hon'ble MR. HARINGTON said that the Bill was introduced on the recommendation of the Government of Bengal, but it included the whole of the Bengal Presidency, both Bengal and the North-Western Provinces.

The Motion was put and agreed to.

The following Select Committees were named:—

On the Bill to provide for the solemnization of Marriages in India of persons professing the Christian Religion—the Hon'ble Messrs. Harington, Erskine, Ellis, and Roberts.

On the Bill to amend Act XXI of 1856 (to consolidate and amend the Law relating to the Abkaree Revenue of Fort William in Bengal) and Act XXIII of 1860 (to amend the said Act XXI of 1856)—the Hon'ble Messrs. Harington, Erskine, Ellis, and Roberts.

The Council adjourned.

M. WYLIE,
Deputy Secy. to the Govt. of India,
Home Department.

CALCUTTA,
The 17th December 1862.

Abstract of the Proceedings of the Council of the Governor-General of India assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., C. 67.

THE Council met at Government House, on Wednesday, the 24th December 1862.

PRESENT:

His Excellency the Viceroy and Governor-General of India, *presiding*.
His Honor the Lieutenant-Governor of Bengal.
Major-General the Hon'ble Sir R. Napier, K. C. B.
The Hon'ble H. B. Harington.
The Hon'ble H. Sumner Maine.
The Hon'ble C. J. Erskine.
The Hon'ble W. S. Fitzwilliam
The Hon'ble D. Cowie.
The Hon'ble Rajah Deo Narain Singh Bahadoor.
The Hon'ble Rajah Dinkar Rao Rugonauth Moontazim Bahadoor.
The Hon'ble R. S. Ellis, C. B.
The Hon'ble A. A. Roberts, C. B.

DIVORCE COURT BILL.

The Hon'ble MR. MAINE moved for leave to introduce a Bill for conferring upon the High Courts of Judicature in India the jurisdiction and powers vested in the Court for Divorce and Matrimonial Causes in England. He said that the object of the Bill was to give effect to the policy embodied in the High Court's Act passed in 1861, and to the Letters Patent issued by Her Majesty for constituting the High Courts. The object of the High Court's Act seemed to have been, not so much to create new branches of jurisdiction, as to constitute and re-distribute the power which already existed. The 9th Clause gave power to Her Majesty to confer on the High Courts such matrimonial jurisdiction as she thought fit; but following the principle he had mentioned, Her Majesty did not attempt to confer on the High Court such a jurisdiction as was exercised by the Divorce Court in England. The Secretary of State therefore requested the Governor-General to introduce a measure, conferring a jurisdiction on the High Courts here similar to that exercised by the Divorce Court sitting in London. The course pursued was probably the only one which could have been followed under the circumstances

But it had given rise to a peculiar difficulty, which had been the cause of some delay in introducing this Bill. The matter was so delicate and important, that even before the text of the Bill was in the hands of the Members, he would state what that difficulty was. He need not say that, before such a Bill as this was brought in, deeply concerning the High Court, it was submitted to the Judges of that tribunal. The Government were in possession of their answers, and two of the Judges of the High Court of Bengal had given specific opinions on the point to which he had referred. They called attention to its being doubtful whether, if the High Court, acting under the authority conferred by the Council, decreed the dissolution of marriage between persons belonging to a certain class of Her Majesty's subjects in India, there was anything in the present state of the Law which would compel the English Courts to recognize those decrees, and to view the marriages put an end to as legally dissolved. One learned Judge (Mr. Justice Norman) was on the whole of opinion, that a decree of the High Court dissolving a marriage would now be recognized in England. The Chief Justice, however, considered it more than doubtful, whether such decrees would be allowed by the English Courts to have this consequence, and though no concurrence of his (Mr. Maine's) could add weight to the opinion of Sir Barnes Peacock on this point, he must say that ever since he had tried to address himself to this subject, he had been struck with the same difficulty. He would attempt to explain what this difficulty was. There was no doubt that the rule of a private international Law, the rule received among communities under what was called the comity of nations, was that every man's status, his personal condition, was to be determined by the law of his domicile, of the country in which he was domiciled; so that a man who was a major or minor, or bachelor or divorced man, in the place where he had acquired a domicile, was a major or minor, and so forth, in every other country. Of course the highest authority by which a man's status could be declared in any country was the authority of a Court of competent jurisdiction, and hence it followed that all tribunals were bound by the comity of nations to respect and recognize the decrees of divorce passed by foreign Courts. Now, then, as the Courts of every dependency of the British Crown, which had a complete and independent judicial system, are foreign Courts relatively to the English tribunals, it would seem that a decree of the High Court dissolving a marriage between domiciled Christians under the measure now to be introduced, ought to be deemed effectual by every English tribunal; and that such a decree would be regarded as valid in respect of one class of Indian Christians, there seemed to be no doubt. When persons had been married in India, and the marriage had been dissolved by the High Court, no difficulty existed, and the dissolution would be held to be complete even in England. But when persons had been married in England, and their marriage had been dissolved in India, it was far from certain that English tribunals would consider them at liberty to re-marry. The doubt had been caused by a judicial decision which had become memorable in that branch of jurisprudence, and which was known as *the King* against *Lolly*, or Lelly's case. Lolly, in 1812, was indicted for bigamy

and he pleaded in defence that his first marriage was dissolved by a Scotch decree. All the twelve English Judges held that such a dissolution was of no validity in England; and Lolly, who had been convicted, underwent the punishment to which he had been sentenced. The decision was, as he had heard, consonant with the prevalent feeling of the time, for much anxiety had been caused by the apparent facility with which divorces were obtained from the Consistorial Branch of the Scottish Court of Session, but at the same time it was in flagrant discordance with the rule of private international Law. Hence, a long succession of the best legal authorities had expressed dissatisfaction with Lolly's case, or had attempted to explain it away. Some, with whom Mr. Justice Norman was disposed to agree, had pointed out that the decision turned partly on the circumstance that marriages at common Law in 1812 were incapable of dissolution; so that the Law being now otherwise, the case had lost its authority. Others, including the Judge of greatest experience in matrimonial Law, Dr. Lushington, had observed that the Judges, in 1812, did not seem to have paid attention to the question of domicile. But on the whole, he ventured to think that the better opinion was Sir Barnes Peacock's, who considered that, so long as Lolly's case was not formally over-ruled, it was impossible to say that persons married in England and divorced in India, would be regarded in England as capable of contracting a legitimate re-marriage. This case, too, as the Council would see, was one in which doubt was almost as intolerable as unfavorable certainty; for doubts as to the validity of divorces were doubts as to the lawfulness of re-marriage; doubts as to the lawfulness of re-marriages, were doubts as to the legitimacy of children; and doubts as to the legitimacy of children, were doubts as to the right of inheritances; so that these difficulties, if not set at rest, might lie in ambush for the third and fourth generation, and fifty or sixty years hence, the right to an estate might be impeached on account of an unsettled question respecting an Indian divorce. The question therefore was, what course ought they to adopt in legislating on these subjects. There could be no doubt that, as they were competent to legislate for a large class of Christian subjects, those who had been married in India, they should not delay the relief they could give to such of them as were unfortunate enough to be compelled to resort to the new branch of the High Court. Meantime, the Governor-General in Council had requested the Secretary of State to lay the difficulty before the Law Officers of the Crown. If they, considering the criticisms which had been directed against Lolly's case by so many learned persons, were of opinion, that it was originally decided erroneously, there would be reasonable security for persons married in England who might re-marry after a decree of divorce by the High Court. If they thought that Lolly's case still stood in the way, the Secretary of State would doubtless think fit to apply to Parliament for a remedy, which might take either of two forms suggested by the Judges of the High Court. Indian divorces might be rendered, simply and at once, as binding in England as divorce by the English Divorce Court, or they might be registered there, and if not appealed from within a certain period, they might acquire the validity of an English matrimonial decree.

The Motion was put and agreed to.

EMIGRATION TO SAINT CROIX.

The Hon'ble Mr. Maine moved for leave to introduce a Bill relating to the emigration of Native Laborers to the Danish Colony of St. Croix, and said that, after a rather protracted negotiation between the Danish and Her Majesty's Governments, it had been resolved to pass a measure giving effect to emigration to that Colony. The Bill had been framed exactly in the same way as former Bills; and as it was a matter of comparatively small importance, he would not take up the time of the Council with any further remarks.

The Motion was put and agreed to.

ARTICLES OF WAR.

The Hon'ble Mr. Maine introduced the Bill to amend Act XXIX of 1861 (to consolidate and amend the Articles of War for the government of the Native Officers and Soldiers in Her Majesty's Indian Army), and moved that it be referred to a Select Committee with instructions to report in four weeks. He said that the only Clause in the amended Bill which was of great importance, was that which conferred certain powers on Officers belonging to small Detachments situated beyond the Seas. The exact nature of all the amendments would be seen in paper marked No. 1., appended to the old Articles side by side.

The Motion was put and agreed to.

ACT XX. of 1862 CONTINUANCE BILL.

The Hon'ble Mr. Maine also introduced the Bill to continue in force Act XX of 1862 (to provide for the levy of Fees and Stamp duties in the High Court of Judicature at Fort William in Bengal; and to suspend the operation of certain Sections of Act VIII of 1859 in the said High Court) till the 1st January 1864. The object of the Bill (he said) was to supply an in omission the original Bill. By an accident, which very frequently occurred in the preparation of enactments of that kind, provision had not been made to enable the Court to fix the time within which an application for a review of judgment should be made. Provision had been made for Appeals, and this Bill would put applications for reviews on the same ground. He applied to His Excellency the President to suspend the Rules of Business, in order that the Bill might be passed at once.

His Excellency the President declared the Rules suspended.

The Motion that the Bill be passed was then put and agreed to.

The following Select Committee was named :—

On the Bill to amend Act XXIX of 1861 (to consolidate and amend the Articles of War for the government of the Native Officers and Soldiers in Her Majesty's Indian Army)—Messrs. Erskine, Ellis, and Roberts.

The Council adjourned.

M. WYLIE,
Deputy Secy. to the Govt. of India,
Home Department.

CALCUTTA ;
The 24th December 1862